THE GENERAL STATUTES OF NORTH CAROLINA

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ANNOTATED

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1997 CUMULATIVE SUPPLEMENT

VOLUME 5

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THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1997 CUMULATIVE SUPPLEMENT

Volume 5

Chapters 18 through 20

Prepared under the supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 486 S.E.2d 626. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

MICHIE
Law Publishers
Charlottesville, Virginia
1997

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Preface

This Cumulative Supplement to Volume 5 contains the general laws of a permanent nature enacted by the General Assembly through the 1997 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1997 Regular Session affecting Chapters 18 through 20 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 344, p. 732.
North Carolina Court of Appeals Reports through Volume 123, p. 790.
South Eastern Reporter 2nd Series through Volume 486, p. 626.
Federal Reporter 3rd Series through Volume 116, p. 875.
Federal Supplement through Volume 965, p. 1486.
Federal Rules Decisions through Volume 172, p. 600.
Bankruptcy Reports through Volume 209, p. 549.
Supreme Court Reporter through Volume 117, p. 1864.
North Carolina Law Review through Volume 75, p. 1088.
Wake Forest Law Review through Volume 32, p. 217.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

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The General Statutes of North Carolina
1997 Cumulative Supplement

VOLUME 5

Chapter 18B.
Regulation of Alcoholic Beverages.

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ARTICLE 1.

General Provisions.

§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

(1) "ABC law" or "ABC laws" means any statute or statutes in this Chapter or in Article 2C of Chapter 105, and the rules issued by the Commission under the authority of this Chapter.

(2) "ABC permit" or "permits" means any written or printed authorization issued by the Commission pursuant to the provisions of this Chapter, other than a purchase-transportation permit. Unless the context clearly requires otherwise, as in the provisions concerning applications for permits, "ABC permit" or "permit" means a presently valid permit.

(3) "ABC system" means a local board and all ABC stores operated by it, its law-enforcement branch, and all its employees.

(4) "Alcoholic beverage" means any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(5) "ALE Division" means the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety.

(5a) "Bailment surcharge" means the charge imposed on each case of liquor shipped from a Commission warehouse as provided in G.S. 18B-208. This bailment surcharge is in addition to the bailment charge imposed by G.S. 18B-804(b)(2).

(6) "Commission" means the North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(7) "Fortified wine" means any wine made by fermentation from grapes, fruits, berries, rice, or honey, to which nothing has been added other than pure brandy made from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and which has an alcoholic content of not more than twenty-four percent (24%) alcohol by volume.

(8) "Local board" means a city or county ABC board, or local board created pursuant to the provisions of G.S. 18B-703. A local board is an independent local political subdivision of the State. Nothing in this Chapter shall be construed as constituting a local board the agency of a city or county or of the Commission.

(9) "Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than six percent (6%), alcohol by volume.

(10) "Mixed beverage" means either of the following:
   a. A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.
   b. A premixed cocktail served from a closed package containing only one serving.

(11) "Nontaxpaid alcoholic beverage" means any alcoholic beverage upon which the taxes imposed by the United States, this State, or any other territorial jurisdiction in which the alcoholic beverage was purchased have not been paid.

(12) "Person" means an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.

(13) "Sale" means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.

(13a) "Special ABC area" means an area that meets the following requirements:
Either:
a.1. Has fewer than 500 permanent residents;
   2. Is located in a county that borders another state, that has at least one city that has approved the operation of an ABC store, and in which the sale of unfortified wine and malt beverages is permitted countywide or in at least two cities; and
   3. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an

association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

b. 1. Has more than 500 permanent residents;

2. Is located in a county:

I. Where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved;

II. That borders on a county that has approved the sale of alcoholic beverages countywide and contains an international airport; and

III. Borders on a county where ABC stores have heretofore been established by petition pursuant to law; and

3. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services.

(14) "Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.

(14a) "Tourism ABC establishment" means a restaurant or hotel that meets both of the following requirements:

a. Is located on property, a property line of which is located within 1.5 miles of the end of an entrance or exit ramp of a junction on a national scenic parkway designed to attract local, State, national, and international tourists between Milepost 305 and 460.

b. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in at least one city.

(15) "Unfortified wine" means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 2; c. 1285, s. 1; 1983, c. 435, s. 41; 1985, c. 69; 1987, c. 443, s. 1; 1989, c. 629, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 5; 1991 (Reg. Sess., 1992), c. 920, ss. 1, 10; 1993, c. 415, ss. 1, 2; 1995, c. 466, s. 1; 1997-443, s. 16.27(b).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "on property, a property line of which is located" in subdivision (14a)a.

§ 18B-102.1. Direct shipments from out-of-state prohibited.

(a) It is unlawful for any person who is an out-of-state retail or wholesale dealer in the business of selling alcoholic beverages to ship or cause to be shipped any alcoholic beverage directly to any North Carolina resident who does not hold a valid wholesaler's permit under Article 11 of this Chapter.

(b) The Commission shall mail a notice by certified mail ordering a person who violates the provisions of subsection (a) of this section to cease and desist any shipments of alcoholic beverages to North Carolina residents. If the offender cannot produce a receipt or otherwise show that applicable State taxes have been paid on the shipped alcohol within 30 days after this notice has been deposited by certified mail addressed to the out-of-state retail or wholesale dealer either at the address shown on the shipment or the last known address of that dealer in any legal registry, such as a registry with the Secretary of State for incorporation of a business, or within 30 days after personal service of the notice on the out-of-state retail or wholesale dealer, it shall be presumptive evidence of his intent to ship alcoholic beverages directly to a North Carolina resident who does not hold a valid wholesaler's permit issued by the Commission.

(c) This section shall not apply to producers of beverage alcohol holding a basic permit from the Bureau of Alcohol, Tobacco and Firearms.

(d) Upon determination by the Commission that a holder of a basic permit from the Bureau of Alcohol, Tobacco and Firearms has made an illegal shipment to consumers in North Carolina, the Commission shall notify the Bureau of Alcohol, Tobacco and Firearms in writing and by certified mail and request the Bureau to take appropriate action.

(e) Whoever violates the provisions of this section shall be guilty of a Class I felony and shall pay a fine of not more than ten thousand dollars ($10,000). (1997-348, s. 1.)

Editor's Note. — Session Laws 1997-348, s. 2, made this section effective December 1, 1997.

ARTICLE 3.

Sale, Possession, and Consumption.

§ 18B-302. Sale to or purchase by underage persons.

CASE NOTES

Cited in In re Kiser, — N.C. App. —, 484 S.E.2d 441 (1997).

§ 18B-307. Manufacturing offenses.

(a) Offenses. — It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit.

(b) Unlawful Manufacturing. — Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. — A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony. (1905, c. 498, s. 2; Rev., s. 3533; 1923, c. 1, ss. 4, 6, 26; C.S., ss. 3407, 3411(d), (f), (z); 1937, c. 49, s. 13; 1945, c. 635; 1951, c. 850; 1955, c. 560; 1957, c. 984; c. 1235, s. 1; 1969, c. 789; 1971, c. 872, s. 1; 1979, c. 699, s. 1; 1981, c. 412, s. 2; c. 747, s. 44; 1997-467, s. 1.)

Effect of Amendments. — The 1997 amendment, effective September 1, 1997, inserted "except equipment and ingredients provided under a Brew on Premises permit" in subdivision (a)(1); inserted "except pursuant to a Brew on Premises permit" in subdivision (a)(2); and inserted "except at an establishment with a Brew on Premises permit" in subsection (b).

ARTICLE 5.

Law Enforcement.

§ 18B-501. Local ABC officers.

Local Modification. — MecKlenburg County Alcoholic Beverage Board: 1997-224; Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 7.

Local ABC Boards.

§ 18B-700. Appointment and organization of local ABC boards.

Local Modification. — City of Kings Mountain: 1997-47.

For additional local modifications to this section, see the main pamphlet.

Article 8.

Operation of ABC Stores.

§ 18B-805. Distribution of revenue.

(a) Gross Receipts. — As used in this section, "gross receipts" means all revenue of a local board, including proceeds from the sale of alcoholic beverages, investments, interest on deposits, and any other source.

(b) Primary Distribution. — Before making any other distribution, a local board shall first pay the following from its gross receipts:

(1) The board shall pay the expenses, including salaries, of operating the local ABC system.

(2) Each month the local board shall pay to the Department of Revenue the taxes due the Department. In addition to the taxes levied under Chapter 105 of the General Statutes, the local board shall pay to the Department one-half of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9).

(3) Each month the local board shall pay to the Department of Health and Human Services five percent (5%) of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9). The Department of Health and Human Services shall spend those funds for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse.

(4) Each month the local board shall pay to the county commissioners of the county where the charge is collected the proceeds from the bottle charge required by G.S. 18B-804(b)(6), to be spent by the county commissioners for the purposes stated in subsection (h) of this section.

(c) Other Statutory Distributions. — After making the distributions required by subsection (b), a local board shall make the following quarterly distributions from the remaining gross receipts:

(1) Before making any other distribution under this subsection, the local board shall set aside the clear proceeds of the three and one-half percent (3 ½%) markup provided for in G.S. 18B-804(b)(5) and the bottle charge provided for in G.S. 18B-804(b)(6b), to be distributed as part of the remaining gross receipts under subsection (e) of this section.

(2) The local board shall spend for law enforcement an amount set by the board which shall be at least five percent (5%) of the gross receipts remaining after the distribution required by subdivision (1). The local board may contract with the ALE Division to provide the law enforcement required by this subdivision. Notwithstanding the provisions of any local act, this provision shall apply to all local boards.

(3) The local board shall spend, or pay to the county commissioners to spend, for the purposes stated in subsection (h), an amount set by the board which shall be at least seven percent (7%) of the gross receipts remaining after the distribution required by subdivision (1). This provision

shall not be applicable to a local board which is subject to a local act setting a different distribution.

(d) Working Capital. — After making the distributions provided for in subsections (b) and (c), the local board may set aside a portion of the remaining gross receipts, within the limits set by the rules of the Commission, as cash to operate the ABC system. With the approval of the appointing authority for the board, the local board may also set aside a portion of the remaining gross receipts as a fund for specific capital improvements.

(e) Other Distributions. — After making the distributions provided in subsections (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to the general fund of the city or county for which the board is established, unless some other distribution or some other schedule is provided for by law. If the governing body of each city and county receiving revenue from an ABC system agrees, those governing bodies may alter at any time the distribution to be made under this subsection or under any local act. Copies of the governing body resolutions agreeing to a new distribution formula and a copy of the approved new distribution formula shall be submitted to the Commission for review and audit purposes. If any one of the governing bodies later withdraws its consent to the change in distribution, profits shall be distributed according to the original formula, beginning with the next quarter.

(f) Surcharge Profit Shared. — When, pursuant to the last paragraph of G.S. 18B-603(d), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located outside the city, the local board operating the store at which the sale is made shall retain seventy-five percent (75%) of the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) and the remaining twenty-five percent (25%) shall be divided equally among the local ABC boards for all other cities in the county that have authorized the sale of mixed beverages.

When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located at an airport outside the city, the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided equally among the local ABC boards for all cities in the county that have authorized the sale of mixed beverages.

(g) Quarterly Distributions. — When this section requires a distribution to be made quarterly, at least ninety percent (90%) of the estimated distribution shall be paid to the recipient by the local board within 30 days of the end of that quarter. Adjustments in the amount to be distributed resulting from the closing of the books and from audit shall be made with the next quarterly payment.

(h) Expenditure of Alcoholism Funds. — Funds distributed under subdivisions (b)(4) and (c)(3) of this section shall be spent for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse. The minutes of the board of county commissioners or local board spending funds allocated under this subsection shall describe the activity for which the funds are to be spent. Any agency or person receiving funds from the county commissioners or local board under this subsection shall submit an annual report to the board of county commissioners or local board from which funds were received, describing how the funds were spent.

(i) Calculation of Statutory Distributions When Liquor Sold at Less Than Uniform Price. — If a local board sells liquor at less than the uniform State price, distributions required by subsections (b) and (c) shall be calculated as though the liquor was sold at the uniform price. (1981, c. 412, s. 2; c. 747, s. 52; 1983, c. 713, ss. 102-104; 1985 (Reg. Sess., 1986), c. 1014, s. 116; 1991, c. 459, s. 3; c. 689, s. 306; 1991 (Reg. Sess., 1992), c. 920, s. 4; 1993, c. 415, s. 27; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in subdivision (b)(3).

ARTICLE 9.

Issuance of Permits.

§ 18B-902. Application for permit; fees.

(a) Form. — An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. The application shall be signed and sworn to by each person required to qualify under G.S. 18B-900(c).

(b) Investigation. — Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

(c) False Information. — Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. — An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit — $200.00.
(2) Off-premises malt beverage permit — $200.00.
(3) On-premises unfortified wine permit — $200.00.
(4) Off-premises unfortified wine permit — $200.00.
(5) On-premises fortified wine permit — $200.00.
(6) Off-premises fortified wine permit — $200.00.
(7) Brown-bagging permit — $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit — $200.00.
(9) Limited special occasion permit — $25.00.
(10) Mixed beverages permit — $750.00.
(11) Culinary permit — $100.00.
(12) Unfortified winery permit — $150.00.
(13) Fortified winery permit — $150.00.
(14) Limited winery permit — $150.00.
(15) Brewery permit — $150.00.

(16) Distillery permit — $150.00.
(17) Fuel alcohol permit — $50.00.
(18) Wine importer permit — $150.00.
(19) Wine wholesaler permit — $150.00.
(20) Malt beverage importer permit — $150.00.
(21) Malt beverage wholesaler permit — $150.00.
(22) Bottler permit — $150.00.
(23) Salesman permit — $25.00.
(24) Vendor representative permit — $25.00.
(25) Nonresident malt beverage vendor permit — $50.00.
(26) Nonresident wine vendor permit — $50.00.
(27) Any special one-time permit under G.S. 18B-1002 — $25.00.
(28) Winery special event permit — $100.00.
(29) Mixed beverages catering permit — $100.00.
(30) Guest room cabinet permit — $750.00.
(31) Liquor importer/bottler permit — $250.00.
(32) Cider and vinegar manufacturer permit — $100.00.
(33) Brew on premises permit — $200.00.

(e) Fee for Combined Applications. — If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be two hundred dollars ($200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars ($300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be fifty dollars ($50.00).

(f) Fee Not Refundable. — The fee required by subsection (d) shall not be refunded.

(g) Fees to Treasurer. — All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund. (1949, c. 974, ss. 1, 2; 1963, c. 119; c. 426, s. 12; 1965, c. 326; 1971, c. 872, s. 1; 1973, c. 758, s. 2; c. 1012; 1975, c. 19, s. 5; 1977, c. 70, s. 19.1; c. 668, s. 3; c. 977, ss. 1, 2; 1979, c. 286, s. 4; 1981, c. 412, s. 2; c. 747, ss. 55, 56; 1983, c. 713, s. 105; 1989, c. 737, s. 3; c. 800, s. 7; 1991, c. 267, s. 2; c. 565, ss. 2, 7; c. 669, s. 2; c. 689, ss. 307, 308; 1991 (Reg. Sess., 1992), c. 920, s. 5; 1993, c. 415, s. 11; 1993 (Reg. Sess., 1994), c. 745, s. 28; 1995, c. 404, s. 2; c. 466, s. 7; 1997-134, s. 3; 1997-467, s. 2.)

Effect of Amendments. — Session Laws 1997-134, s. 3, effective June 4, 1997, added subdivision (d)(32). Session Laws 1997-467, s. 2, effective September 1, 1997, added subdivision (d)(33).

ARTICLE 10.

Retail Activity.

§ 18B-1001. Kinds of ABC permits; places eligible.

When the issuance of the permit is lawful in the jurisdiction in which the premises is located, the Commission may issue the following kinds of permits:

(1) On-Premises Malt Beverage Permit. — An on-premises malt beverage permit authorizes the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses;
   f. Private clubs;
   g. Convention centers;
   h. Community theatres.

   The permit may also be issued to certain breweries as authorized by G.S. 18B-1104(7).

(2) Off-Premises Malt Beverage Permit. — An off-premises malt beverage permit authorizes the retail sale of malt beverages in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses.

(3) On-Premises Unfortified Wine Permit. — An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Private clubs;
   e. Convention centers;
   f. Cooking schools;
   g. Community theatres;
   h. Wineries.

(4) Off-Premises Unfortified Wine Permit. — An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit may also be issued for a winery for sale of its own unfortified wine.

(5) On-Premises Fortified Wine Permit. — An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theatres;
e. Wineries;
f. Convention centers.

(6) Off-Premises Fortified Wine Permit. — An off-premises fortified wine permit authorizes the retail sale of fortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for food businesses. The permit may also be issued for a winery for sale of its own fortified wine.

(7) Brown-Bagging Permit. — A brown-bagging permit authorizes each individual patron of an establishment, with the permission of the permittee, to bring up to eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, onto the premises and to consume those alcoholic beverages on the premises. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theatres;
e. Congressionally chartered veterans organizations.

(8) Special Occasion Permit. — A special occasion permit authorizes the host of a reception, party or other special occasion, with the permission of the permittee, to bring fortified wine and spirituous liquor onto the premises of the business and to serve the same to his guests. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Eating establishments;
d. Private clubs;
e. Convention centers.

(9) Limited Special Occasion Permit. — A limited special occasion permit authorizes the permittee to bring fortified wine

and spirituous liquor onto the premises of a business, with the permission of the owner of that property, and to serve those alcoholic beverages to the permittee's guests at a reception, party, or other special occasion being held there. The permit may be issued to any individual other than the owner or possessor of the premises. An applicant for a limited special occasion permit shall have the written permission of the owner or possessor of the property on which the special occasion is to be held.

(10) Mixed Beverages Permit. — A mixed beverages permit authorizes the retail sale of mixed beverages for consumption on the premises. The permit also authorizes a mixed beverages permittee to obtain a purchase-transportation permit under G.S. 18B-403 and 18B-404, and to use for culinary purposes spirituous liquor lawfully purchased for use in mixed beverages. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Private clubs;
d. Convention centers;
e. Community theatres;
f. Nonprofit organizations; and
g. Political organizations.

(11) Culinary Permit. — A culinary permit authorizes a permittee to possess up to 12 liters of either fortified wine or spirituous liquor, or 12 liters of the two combined, in the kitchen of a business and to use those alcoholic beverages for culinary purposes. The permit may be issued for either of the following:

a. Restaurants;
b. Hotels.
c. Cooking schools.

A culinary permit may also be issued to a catering service to allow the possession of the amount of fortified wine and spirituous liquor stated above at the business location of that service and at the cooking site. The permit shall also authorize the caterer to transport those alcoholic beverages to and from the business location and the cooking site, and use them in cooking.

(12) Mixed Beverages Catering Permit. — A mixed beverages catering permit authorizes a hotel or a restaurant that has a mixed beverages permit to bring spirituous liquor onto the premises where the hotel or restaurant is catering food for an event and to serve the liquor to guests at the event.

(13) Guest Room Cabinet Permit. — A guest room cabinet permit authorizes a hotel having a mixed beverages permit or a private club having a mixed beverages permit and management contracts for the rental of living units to sell to its room guests, from securely locked cabinets, malt beverages, unfortified wine, fortified wine, and spirituous liquor. A permittee shall designate and maintain at least ten percent (10%) of the permittee's guest rooms as rooms that do not have a guest room cabinet. A permittee may dispense alcoholic beverages from a guest room cabinet only in accordance with written policies and procedures

filed with and approved by the Commission. A permittee shall provide a reasonable number of vending machines, coolers, or similar machines on premises for the sale of soft drinks to hotel guests.

A guest room cabinet permit may be issued for any of the following:

a. A hotel located in a county subject to G.S. 18B-600(f).
b. A hotel located in a county that has a population in excess of 150,000 by the last federal census.
c. A qualifying private club located in a county defined in G.S. 18B-101(13a)b.2.

(14) Brew on Premises Permit. — A permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in 27 C.F.R. § 25.205. The customer must do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

A permittee may transfer the ingredients from the fermentation room to the cold room and may assist the customer in all the steps involved in brewing a malt beverage except adding the yeast. A malt beverage produced under this subdivision may not contain more than six percent (6%) alcohol by volume. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c, 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, ss. 16, 17, 22; 1983, c. 457, s. 3; c. 583, ss. 2-5; 1985, c. 89, ss. 1-3; c. 596, s. 1; 1987, c. 391, s. 2; c. 434, s. 1; 1989, c. 800, ss. 11, 12; 1991, c. 459, ss. 5, 6; c. 565, ss. 1, 7; c. 669, s. 1; 1991 (Reg. Sess., 1992), c. 920, s. 7; 1993, c. 508, s. 5; 1995, c. 466, s. 10; c. 509, ss. 16-18; 1997-443, s. 16.28; 1997-467, s. 3.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, s. 16.28, effective July 1, 1997, in subdivision (13) inserted "or a private club having a mixed beverages permit and management contracts for the rental of living units", and added subdivision (13)c.

Session Laws 1997-467, s. 3, effective September 1, 1997, added subdivision (14).

§ 18B-1006. Miscellaneous provisions on permits.

(a) School and College Campuses. — No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. Provided, however, this subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board.

(b) Lockers at Clubs. — A private club or congressionally-chartered veterans organization which has been issued a brown-bagging permit may, but is not required to, provide lockers for its members to store their alcoholic beverages. If lockers are provided, however, they shall not be shared but shall be for individual members. Each locker and each bottle of alcoholic beverages on the premises shall be labelled with the name of the member to whom it belongs. No more than eight liters each of malt beverages or unfortified wine may be stored by a member at one time. No more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined, may be stored by a member at one time.

(c) Wine Sales. — Holders of retail or wholesale permits for the sale of unfortified or fortified wine may buy and sell only wines on the Commission's approved list. The Commission may authorize the importation and purchase of wines not on the approved list by permittees and others. An authorization shall state the kind and amount of wine that may be imported and purchased and the time within which the transaction shall be completed.

(d) Unlawful Possession or Consumption. — It shall be unlawful for a permittee to possess or consume, or allow any other person to possess or consume, on the licensed premises, any fortified wine or spirituous liquor, the possession or consumption of which is not authorized either by the permits issued to him for the premises or by any other provision of the ABC law.

(e) Facsimile Permit. — It shall be unlawful for any person to produce or possess any false or facsimile permit, or for a permittee to display any false or facsimile permit on his licensed premises.

(f) Failure to Surrender Permit. — It shall be unlawful for any person to refuse to surrender any permit to the Commission upon lawful demand of the Commission or its agents.

(g) Restrictions on Sales at Cooking Schools. — Retail sales of food or alcoholic beverages to be consumed on the premises of a cooking school are restricted to bona fide enrolled students of that school. Violation of this subsection is a ground for administrative action under G.S. 18B-104.

(h) Purchase Restrictions. — A retail permittee may purchase malt beverages, unfortified wine, or fortified wine only from a wholesaler who maintains a place of business in this State and has the proper permit.

(i) Tour Boats. — The Commission may issue permits to boats that conduct regularly scheduled tours upon the rivers or waterways of this State under the following conditions:

(1) A boat shall serve meals on each tour and shall have a dining area with seating for at least 36 people;

(2) A boat's gross receipts from food and non-alcoholic beverages shall be greater than its gross receipts from alcoholic beverages;

(3) A boat may hold the permits listed in G.S. 18B-1001(1), (3), (5), (7), and (10), but no off-premises sales may be made pursuant to those permits;

(4) A boat shall have a home port in an area where issuance of any of the permits listed in subdivision (3) is legal, and all passengers shall enter the boat at the home port or at other ports listed on a preannounced itinerary. The boat's permits are valid during tours that leave and return to the boat's home port, and apply regardless of whether the boat crosses into an area where sales are not legal, if the boat docks only at a port listed on the preannounced itinerary, except in an emergency; and

(5) A boat conducting tours along the intracoastal waterway and navigable waterways that enters into the intracoastal waterway, pursuant to a preannounced itinerary that includes visits to two or more cities, may serve alcoholic beverages pursuant to ABC permits issued according to the jurisdiction of its home port in the following manner:

a. While on tour, alcoholic beverages may be served to passengers;

b. While docked in any other port alcoholic beverages may be served only to tour passengers;

c. During special city-sponsored events and festivals, in which case the boat may open its galley and bars at dockside to the general public and sell those alcoholic beverages that are lawful in the jurisdiction in which it is docked. Any sales in this manner shall be in accordance with the requirements of any ordinances of the jurisdiction in which the boat is docked.

(6) Liquor purchased for resale in mixed beverages may be purchased only from the local board for the jurisdiction of the boat's home port.

(j) Recreation Districts. — Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages to qualified businesses in a recreation district.

A "recreation district" is:

(1) An area that is located in a county that has not approved the issuance of permits, has at least two cities that have approved the sale of malt beverages, wine, and the operation of an ABC store, and contains a facility of at least 450 acres where five or more public auto racing events are held each year; or

(2) An area that is located in a county that borders a county which has held elections pursuant to G.S. 18B-600(f) and borders on another state and which (i) contains a facility of at least 225 acres where four or more public auto racing events are held each year or (ii) contains a facility of at least 140 acres where 80 or more motor sports events are held each year.

The recreation district includes the area within a half-mile radius of the racing facility.

(k) Residential Private Club and Sports Club Permits. — The Commission may issue the permits listed in G.S. 18B-1001, without approval at an election, to a residential private club or a sports club that is located in a county that meets the requirements set in any of the following subdivisions:

(1) Has a population of less than 45,000 by the last federal census, has at least three but not more than four cities that have approved the sale of malt beverages or unfortified wine, has only one city that has approved the on-premises sale of malt beverages, and has at least two cities that approved the operation of ABC stores before July 10, 1992.

(2) Borders a county that has called elections pursuant to G.S. 18B-600(f), and:

  a. Has not approved the issuance of permits, other than malt beverage permits, in unincorporated areas of the county, and has no more than three cities that approved the operation of ABC stores before July 10, 1992; or

  b. Both the county and the two cities within the county have approved the operation of ABC stores.

(3) Is bordered by four counties that have not approved the issuance of permits and have at least one city that has approved the operation of an ABC store.

(4) Has not approved the issuance of permits, has at least three cities that have approved the issuance of only either off-premises malt beverage or both off-premises malt beverage and off-premises unfortified wine permits, and has only one city that, as of July 1, 1993, had approved the operation of an ABC store.

(5) Has not approved the issuance of any permits, borders one of the two largest counties in the State with more than 940 square miles, has an interstate highway running through it, and has at least six cities that have approved the sale of some malt beverages and unfortified wine and four of which have approved ABC systems.

(6) Borders a county that has approved the issuance of all permits and the operation of an ABC store, meets the county description of a special ABC area in G.S. 18B-101(13a)b., and, as of July 1, 1995, had at least five cities that had authorized the issuance of permits.

(7) Borders two states and, as of July 1, 1995, had only one city that had approved the issuance of permits.

The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county.

(*l*) Economic Development and Tourist District. — Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of mixed beverages to qualified businesses in an economic development and tourist district. An "economic development and tourist district" is a district that is a political subdivision of the State, is within the corporate limits of a city, was established by an act of the General Assembly enacted before July 1, 1997 which specifically designates it in the act as an "economic development and tourist district", and was established for the purpose of promoting economic development and tourism in the district. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the city in which the district is located. The governing body of a district that is eligible for mixed beverages permits under this subsection must file with the Commission a certified copy of a map setting out the boundaries of the district.

(m) Interstate Interchange Economic Development Zones. — The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:

(1) Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;
(2) Operates ABC stores;
(3) Borders on another state; and
(4) Lies north and east of the Roanoke River. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 23; 1985, c. 114, s. 2; c. 301; 1987, c. 515; c. 760; 1989, c. 360; c. 770, s. 49; c. 800, s. 18; 1991, c. 340, s. 1; c. 459, s. 7; 1991 (Reg. Sess., 1992), c. 920, s. 12; 1993, c. 415, ss. 17-19; c. 508, s. 6; 1995, c. 224, s. 1; c. 372, s. 2; c. 458, s. 8; c. 466, ss. 11-12; 1997-182, s. 3; 1997-395, s. 1; 1997-443, s. 16.27(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-182, s. 3, effective June 13, 1997, added subsection (*l*).

Session Laws 1997-395, s. 1, effective August 14, 1997, added subsection (m).

Session Laws 1997-443, s. 16.27(a), effective July 1, 1997, in subsection (j) added the subdivision (j)(1) designation and made a related change, and in subdivision (j)(1) deleted "The recreation district includes the area within a half-mile radius of the racing facility" and added "or"; added subdivision (j)(2); and added the last sentence of the subsection.

§ 18B-1009. In-stand sales.

Nothing in this Chapter shall be construed to prohibit a retail permittee from selling for consumption, malt beverages in the seating areas of stadiums, ballparks, and other similar public places with a seating capacity of 60,000 or more during professional sporting events, in municipalities with a population greater than 450,000, according to the most recent estimate of population made by the Office of State Budget and Management, provided that:

(1) The seating areas are designated as part of the retail permittee's licensed premises;
(2) The retail permittee has notified the Commission, in writing, of its intent to sell malt beverages in the seating areas at sporting events;
(3) Service of food and nonalcoholic beverages is available in the seating areas;
(4) The retail permittee has certified to the Commission that it has trained its employees:
    a. To identify underage persons and intoxicated persons; and
    b. To refuse to sell malt beverages to those persons as required by G.S. 18B-305; and

(5) The employees do not verbally shout or hawk the sale of malt beverages. (1997-167, s. 1.)

Editor's Note. — Session Laws 1997-167, s. 2, made this section effective June 10, 1997.

Article 11.

Commercial Activity.

§ 18B-1100. Commercial permits.

The Commission may issue the following commercial permits:

(1) Unfortified winery
(2) Fortified winery
(3) Limited winery
(4) Brewery
(5) Distillery
(6) Fuel alcohol
(7) Wine importer
(8) Wine wholesaler
(9) Malt beverages importer
(10) Malt beverages wholesaler
(11) Bottler
(12) Salesman
(13) Vendor representative
(14) Nonresident malt beverage vendor
(15) Nonresident wine vendor
(16) Winery special show
(17) Liquor importer/bottler permit
(18) Cider and vinegar manufacturer. (1981, c. 412, s. 2; c. 747, s. 59; 1989, c. 737, s. 1; 1995, c. 404, s. 3; 1997-134, s. 1.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, added subdivision (18) and made a related change.

§ 18B-1107. Authorization of wine wholesaler permit.

(a) Authorization. — The holder of a wine wholesaler permit may:

(1) Receive, possess and transport shipments of fortified and unfortified wine;
(2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC laws;
(3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of Revenue;
(4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the Commission;
(5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits, provided that each bottle is marked "out-of-date" by the wholesaler.

(b) Distribution Agreements. — Wine distribution agreements are governed by Article 12 of this Chapter. (1945, c. 903, s. 1; 1947,

c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1983, c. 85, s. 1; 1997-134, s. 4.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, substituted a semi-colon for a period at the end of subdivision (a)(4), and added subdivision (a)(5).

§ 18B-1114.2. Effect of cider and vinegar manufacturer permit.

The holder of a cider and vinegar manufacturer permit may purchase and transport unlimited quantities of out-of-date unfortified or fortified wines from wine wholesalers for the sole purpose of manufacturing a food product item. Any manufacturer of cider or vinegar may apply for this permit. (1997-134, s. 2.)

Editor's Note. — Session Laws 1997-134, s. 5 made this section effective June 4, 1997.

Chapter 19.

Offenses Against Public Morals.

Article 1.

Abatement of Nuisances.

Sec.
19-8.2. Right of entry.

ARTICLE 1.

Abatement of Nuisances.

§ 19-2.1. Action for abatement; injunction.

CASE NOTES

An action to abate a public nuisance by injunction or otherwise must be maintained in the name of the State,

The State, through the district attorney, has not only the authority, but also as an advocate of the State's interest in protecting society, and implied duty to bring public nuisance actions. Whitfield v. Gilchrist, — N.C. App. —, 485 S.E.2d 61 (1997).

Assistance by Private Counsel. — The State Constitution and §§ 7A-61, 147-89 and 19-2.1 do not prohibit a district attorney from employing private counsel to assist in public nuisance actions. Whitfield v. Gilchrist, — N.C. App. —, 485 S.E.2d 61 (1997).

§ 19-8.2. Right of entry.

Authorized representatives of the Commission for Health Services, any local health department or the Department of Health and Human Services, upon presenting appropriate credentials to the owner, operator, or agent in charge of a place described in G.S. 19-1.2, are authorized to enter without delay and at any reasonable time any such place in order to inspect and investigate during the regular hours of operation of such place. (1977, c. 819, s. 9; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Chapter 19A.

Protection of Animals.

Article 1.

Civil Remedy for Protection of Animals.

Sec.
19A-1. Definitions.
19A-2. Purpose.

Article 3.

Animal Welfare Act.

19A-22. Animal Welfare Section in Animal Health Division of Department of Agriculture and Consumer Services created; Director.
19A-23. Definitions.
19A-40. Civil Penalties.

ARTICLE 1.

Civil Remedy for Protection of Animals.

§ 19A-1. Definitions.

The following definitions apply in this Article:

(1) The terms "animals" and "dumb animals" include every useful living creature.

(2) The terms "cruelty" and "cruel treatment" include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted; but these terms shall not be construed to include lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, lawful activities sponsored by agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting such livestock or poultry.

(3) The term "person" includes any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals. (1969, c. 831; 1979, c. 808, s. 2; 1995, c. 509, s. 19.)

§ 19A-2. Purpose.

It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any "person" as hereinbefore defined even though such person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal. (1969, c. 831; 1995, c. 509, s. 20.)

ARTICLE 3.

Animal Welfare Act.

§ 19A-22. Animal Welfare Section in Animal Health Division of Department of Agriculture and Consumer Services created; Director.

There is hereby created within the Animal Health Division of the North Carolina Department of Agriculture and Consumer Services, a new section thereof, to be known as the Animal Welfare Section of said division.

The Commissioner of Agriculture is hereby authorized to appoint a Director of said section whose duties and authority shall be determined by the Commissioner subject to the approval of the Board of Agriculture and subject to the provisions of this Article. (1977, 2nd Sess., c. 1217, s. 3; 1997-261, s. 1.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in the catchline and in the first paragraph.

§ 19A-23. Definitions.

For the purposes of this Article, the following terms, when used in the Article or the rules or orders made pursuant thereto, shall be construed respectively to mean:

(1) "Adequate feed" means the provision at suitable intervals, not to exceed 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. Such foodstuff shall be served in a sanitized receptacle, dish, or container.

(2) "Adequate water" means a constant access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.

(3) "Ambient temperature" means the temperature surrounding the animal.

(4) "Animal" means any domestic dog (Canis familiaris), domestic cat (Felis domestica).

(5) "Animal shelter" means a facility which is used to house or contain animals and which is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection and humane treatment of animals.

(5a) "Boarding kennel" means a facility or establishment which regularly offers to the public the service of boarding dogs or cats or both for a fee. Such a facility or establishment may, in addition to providing shelter, food and water, offer grooming or other services for dogs and/or cats.

(6) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(7) "Dealer" means any person who sells, exchanges, or donates, or offers to sell, exchange, or donate animals to

another dealer, pet shop, or research facility; provided, however, that an individual who breeds and raises on his own premises no more than the offspring of five canine or feline females per year, unless bred and raised specifically for research purposes shall not be considered to be a dealer for the purposes of this Article.

(8) "Director" means the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture and Consumer Services.

(9) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves rapid unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during such loss of consciousness.

(10) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(11) "Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity.

(12) "Pet shop" means a person or establishment that acquires for the purposes of resale animals bred by others whether as owner, agent, or on consignment, and that sells, trades or offers to sell or trade such animals to the general public at retail or wholesale.

(13) "Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage compartment or hutch.

(14) "Public auction" means any place or location where dogs or cats are sold at auction to the highest bidder regardless of whether such dogs or cats are offered as individuals, as a group, or by weight.

(15) "Research facility" means any place, laboratory, or institution at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.

(16) "Sanitize" means to make physically clean and to remove and destroy to a practical minimum, agents injurious to health. (1977, 2nd Sess., c. 1217, s. 4; 1979, c. 734, s. 1; 1987, c. 827, s. 61; 1997-261, s. 2.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" at the end of subdivision (8).

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. (1995, c. 516, s. 6.)

Editor's Note. — Session Laws 1995, c. 516, s. 17, provides that this section is effective October 1, 1995, and is applicable to violations occurring on or after that date.

Chapter 20.

Motor Vehicles.

Article 1.

Division of Motor Vehicles.

Sec.
20-1. Division of Motor Vehicles established.
20-4. Enforcement duties of the Division.
20-4.01. Definitions.

Article 1A.

Reciprocity Agreements as to Registration and Licensing.

20-4.6. [Repealed.]

Article 2.

Uniform Driver's License Act.

20-7. Issuance and renewal of drivers licenses.
20-7.1. Notice of change of address or name.
20-9.1. Physicians and psychologists providing medical information on drivers with physical and mental disabilities.
20-11. (Effective until August 1, 1998) Application of minors.
20-11. (Effective August 1, 1998) Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.
20-12. [Repealed.]
20-12.1. Impaired supervision or instruction.
20-13.2. Grounds for revoking provisional license.
20-14. Duplicate licenses.
20-15.1. Revocations when licensing privileges forfeited.
20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding; limited driving permits for first offenders.
20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.
20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

Sec.
20-17. Mandatory revocation of license by Division.
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20-183.12. [Repealed.]

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20-212 through 20-215. [Repealed.]

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ARTICLE 1.

Division of Motor Vehicles.

§ 20-1. Division of Motor Vehicles established.

The Division of Motor Vehicles of the Department of Transportation is established. This Chapter sets out the powers and duties of the Division. (1941, c. 36, s. 1; 1949, c. 1167; 1973, c. 476, s. 193; 1975, c. 716, s. 5; c. 863; 1987, c. 827, s. 2; c. 847, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 1.)

Local Modification. — Dare: 1995, c. 196, s. 1.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote this section.

§ 20-4. Enforcement duties of the Division.

(a) Primary Duty. — The primary enforcement duty of the Division is the enforcement of the vehicle weight restrictions set forth in G.S. 20-118. In performing this duty, the Division shall make maximum effective use of permanent weigh stations and portable scales.

(b) Secondary Duties. — The secondary enforcement duties of the Division are as follows and are listed in the order of importance:

(1) Enforcement of the motor carrier safety regulations.
(2) Enforcement of the emissions inspection program.
(3) Inspection of salvage vehicles.
(4) Providing security at rest areas.
(5) Other duties set out in this Chapter.

(c) Restriction. — The Division shall not undertake an enforcement duty that is not listed in this section unless a law specifically authorizes the Division to do so or the duty is undertaken as a condition of receiving federal funds. (1941, c. 36, s. 5; 1975, c. 716, s. 5; 1996, 2nd Ex. Sess., c. 18, s. 19.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Enforcement duties of the Division" for "Clarification of conflicts as to transfer of functions" in the catchline; and rewrote this section.

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. — Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. — The concentration of alcohol in a person, expressed either as:
  a. Grams of alcohol per 100 milliliters of blood; or
  b. Grams of alcohol per 210 liters of breath.

(1c) Business District. — The territory prescribed as such by ordinance of the Board of Transportation.

(2) Canceled. — As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or fraud is void and terminated.

(2a) Class A Motor Vehicle. — A combination of motor vehicles that meets either of the following descriptions:
  a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
  b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. — Any of the following:
  a. A single motor vehicle that has a GVWR of at least 26,001 pounds.
  b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at

least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. — Any of the following:
   a. A single motor vehicle not included in Class B.
   b. A combination of motor vehicles not included in Class A or Class B.

(3) Repealed by Session Laws 1979, c. 667, s. 1.

(3a) Chemical Analysis. — A test or tests of the breath, blood, or other bodily fluid or substance of a person to determine the person's alcohol concentration or presence of an impairing substance, performed in accordance with G.S. 20-139.1, including duplicate or sequential analyses.

(3b) Chemical Analyst. — A person granted a permit by the Department of Health and Human Services under G.S. 20-139.1 to perform chemical analyses.

(3c) Commercial Drivers License (CDL). — A license issued by a state to an individual who resides in the state that authorizes the individual to drive a class of commercial motor vehicle. A "nonresident commercial drivers license (NRCDL)" is issued by a state to an individual who resides in a foreign jurisdiction.

(3d) Commercial Motor Vehicle. — Any of the following motor vehicles that are designed or used to transport passengers or property:
   a. A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
   b. A Class B motor vehicle.
   c. A Class C motor vehicle that meets either of the following descriptions:
      1. Is designed to transport 16 or more passengers, including the driver.
      2. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.
   d. Any other motor vehicle included by federal regulation in the definition of commercial motor vehicle pursuant to 49 U.S.C. Appdx. § 2716.

(4) Commissioner. — The Commissioner of Motor Vehicles.

(4a) Conviction. — A conviction for an offense committed in North Carolina or another state:
   a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:
      1. A final conviction of a criminal offense, including a no contest plea.
      2. A determination that a person is responsible for an infraction, including a no contest plea.
      3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
      4. A third or subsequent prayer for judgment continued within any five-year period.
   b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:
      1. An unvacated adjudication of guilt.

2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(5) Dealer. — Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers or semitrailers in this State, having an established place of business in this State and being subject to the tax levied by G.S. 105-89.

The terms "motor vehicle dealer," "new motor vehicle dealer," and "used motor vehicle dealer" shall have the meaning set forth in G.S. 20-286.

(5a) Disqualification. — A withdrawal of the privilege to drive a commercial motor vehicle.

(6) Division. — The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(7) Driver. — The operator of a vehicle, as defined in subdivision (25). The terms "driver" and "operator" and their cognates are synonymous.

(7a) Employer. — Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(8) Essential Parts. — All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(9) Established Place of Business. — Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading, and selling motor vehicles is or will be carried on and at which the books, records, and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

(10) Explosives. — Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(11) Farm Tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(11a) For-Hire Motor Carrier. — A person who transports passengers or property by motor vehicle for compensation.

(12) Foreign Vehicle. — Every vehicle of a type required to be registered hereunder brought into this State from another

state, territory, or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.

(12a) Gross Vehicle Weight Rating (GVWR). — The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units.

(12b) Hazardous Materials. — Materials designated as hazardous by the United States Secretary of Transportation under 49 U.S.C. § 1803.

(13) Highway. — The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" and their cognates are synonymous.

(14) House Trailer. — Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle.

(14a) Impairing Substance. — Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

(15) Implement of Husbandry. — Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(16) Intersection. — The area embraced within the prolongation of the lateral curblines or, if none, then the lateral edge of roadway lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(17) License. — Any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:
a. Any temporary license or learner's permit;
b. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
c. Any nonresident's operating privilege.

(18) Local Authorities. — Every county, municipality, or other territorial district with a local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

(19) Manufacturer. — Every person, resident, or nonresident of this State, who manufactures or assembles motor vehicles.

(20) Manufacturer's Certificate. — A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is transferred, the date of trans-

fer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.

(21) Metal Tire. — Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(21a) Moped. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(21b) Motor Carrier. — A for-hire motor carrier or a private motor carrier.

(22) Motorcycle. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(23) Motor Vehicle. — Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1.

(24) Nonresident. — Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. — Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. Second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

(25) Operator. — A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms "operator" and "driver" and their cognates are synonymous.

(25a) Out of Service Order. — A temporary prohibition against driving a commercial motor vehicle.

(26) Owner. — A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with

the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

(27) Passenger Vehicles. —

a. Excursion passenger vehicles. — Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. — Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. — Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

d. Motorcycles. — Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. — A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. — A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. — A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. — A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. — Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. — Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. — All other passenger vehicles not included in the above definitions.

(28) Person. — Every individual, firm, partnership, association, corporation, governmental agency, or combination thereof of whatsoever form or character.

(29) Pneumatic Tire. — Every tire in which compressed air is designed to support the load.

(29a) Private Motor Carrier. — A person who transports passengers or property by motor vehicle in interstate commerce and is not a for-hire motor carrier.

(30) Private Road or Driveway. — Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(31) Property-Hauling Vehicles. —

a. Vehicles used for the transportation of property.

b., c. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4, effective June 21, 1996.

d. Semitrailers. — Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.

e. Trailers. — Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including "pole trailers" or a pair of wheels used primarily to balance a load rather than for purposes of transportation.

f. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4, effective June 21, 1996.

(31a) Provisional Licensee. — A person under the age of 18 years.

(32) Public Vehicular Area. — Any area within the State of North Carolina that is generally open to and used by the public for vehicular traffic, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of:

a. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions; or

b. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space for customers, patrons, or the public; or

c. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13.)

The term "public vehicular area" shall also include any beach area used by the public for vehicular traffic as well as any road opened to vehicular traffic within or leading to a subdivision for use by subdivision residents, their guests, and members of the public, whether or not the subdivision roads have been offered for dedication to the public. The term "public vehicular area" shall not be construed to mean any private property not generally open to and used by the public.

(32a) Regular Drivers License. — A license to drive a commercial motor vehicle that is exempt from the commercial drivers license requirements or a noncommercial motor vehicle.

(33)a. Flood Vehicle. — A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

b. Non-U.S.A. Vehicle. — A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

c. Reconstructed Vehicle. — A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

d. Salvage Motor Vehicle. — Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

e. Salvage Rebuilt Vehicle. — A salvage vehicle that has been rebuilt for title and registration.

f. Junk Vehicle. — A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(33a) Relevant Time after the Driving. — Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

(33b) Reportable Accident. — An accident or collision involving a motor vehicle that results in either of the following:
  a. Death or injury of a human being.
  b. Total property damage of one thousand dollars ($1,000) or more.

(34) Resident. — Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State.

(35) Residential District. — The territory prescribed as such by ordinance of the Department of Transportation.

(36) Revocation or Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(37) Road Tractors. — Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(38) Roadway. — That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(39) Safety Zone. — Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(40) Security Agreement. — Written agreement which reserves or creates a security interest.

(41) Security Interest. — An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally.

(41a) Serious Traffic Violation. — A conviction of one of the following offenses when operating a commercial motor vehicle:
  a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
  b. Careless and reckless driving.
  c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.

d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.

(42) Solid Tire. — Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(43) Specially Constructed Vehicles. — Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.

(44) Special Mobile Equipment. — Any of the following:

a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus, is driven on the highway only to get to and from a nonhighway job, and is not designed or used primarily for the transportation of persons or property.

b. A vehicle that has permanently attached special equipment and is used only for parade purposes.

c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.

(45) State. — A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, or a province of Canada.

(46) Street. — A highway, as defined in subdivision (13). The terms "highway" and "street" and their cognates are synonymous.

(47) Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(48) Truck Tractors. — Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(48a) Under the Influence of an Impairing Substance. — The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

(49) Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment.

(50) Wreckers. — Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed. (1973, c. 1330, s. 1; 1975, cc. 94, 208; c. 716, s. 5; c. 743; c. 859, s. 1; 1977, c. 313; c. 464, s. 34; 1979, c. 39; c. 423, s. 1; c. 574, ss. 1-4; c. 667, s. 1; c. 680; 1981, c. 606, s. 3; c. 792, s. 2; 1983, c. 435, s. 8; 1983 (Reg. Sess., 1984), c. 1101, ss. 1-3; 1985, c. 509, s. 6; 1987, c. 607, s. 2; c. 658, s. 1; 1987 (Reg. Sess., 1988), c. 1069; c. 1105, s. 1; c. 1112, ss. 1-3; 1989, c. 455, s. 1; c. 727, s. 219(1); c. 771, s. 1; 1991, c. 449, s. 2; c. 726, ss. 1-4; 1991 (Reg. Sess., 1992), c. 1015, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 22; 1995, c. 191, s. 1; 1995 (Reg. Sess., 1996), c. 756, ss. 2-4; 1997-379, s. 5.1; 1997-443, s. 11A.8; 1997-456, s. 27.)

Editor's Note. — Subsections (0.1), (0.2) and (1) were redesignated as subsections (1a), (1b) and (1c) and the subunits of subsection 33 were renumbered pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 1997-379, s. 7, provides: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, added subdivision (33b).

Session Laws 1995 (Reg. Sess., 1996), c. 756, ss. 2, 3, and 4, effective June 21, 1996, inserted subdivisions (11a) and (21b); in subdivision (27)c., substituted "certificate of authority" for "franchise certificate", and deleted "or property" following "transportation of persons"; inserted subdivision (29a); and rewrote subdivision (31).

Session Laws 1997-379, s. 5.1, effective December 1, 1997, and applicable to offenses committed on or after that date, rewrote subdivision (3a).

Session Laws 1997-443, s. 11A.8, effective August 28, 1997, substituted "Heath and Human Services" for "Environment, Health, and Natural Resources" in subdivision (3b).

Session Laws 1997-456, s. 29, effective August 29, 1997, rewrote subdivision (27)d1.

CASE NOTES

Trucks. — Trucks, even if used for private purposes, are not private passenger type autos. Harleysville Mut. Ins. Co. v. Packer, 60 F.3d 1116 (4th Cir. 1995).

Low-boy trailer and Mack truck were not private passenger motor vehicles as they did not have a pickup body and were not delivery sedans nor panel trucks. Nationwide Mut. Ins. Co. v. Mabe, 342 N.C. 482, 467 S.E.2d 34 (1996).

A mobile home is a motor vehicle, etc. —

It is clear under North Carolina law that a mobile home is a "motor vehicle" for purposes of the statutes dealing with registration and ownership of motor vehicles. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

Public Vehicular Area. —

Area where an accident between plaintiff and defendant's truck occurred was a public vehicular area and not a roadway. The accident occurred in the traffic lane of a parking lot generally open to and used by the public for vehicular traffic upon the premises of a business establishment which provided parking space for its customers. Although the lot was held open for use by the public, there was no evidence that the general public had a legally enforceable right to use the lot. Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993).

Street in mobile home park, owned by one individual who had divided the property into lots for lease, that was not marked as private, and was available for use by residents, their guests and other visitors, was a public vehicular area within the meaning of subsection (32). State v. Turner, 117 N.C. App. 457, 451 S.E.2d 19 (1994).

Where the evidence established that a private club was licensed by the state to serve alcohol to guests of members as well as to members themselves, the club's parking lot could be used as a thoroughfare by members of the general public, there were no signs posted in the club's parking lot prohibiting the public from parking there and no signs posted stating that the parking lot was private property, nor was there any security or membership cards allowing members exclusive access to the parking lot, the evidence was sufficient to support a peremptory instruction that the club's parking lot was a "public vehicular area" as a matter of law. State v. Snyder, 343 N.C. 61, 468 S.E.2d 221 (1996).

A sign prohibiting loitering in a parking lot did not change the nature of the property; thus, a car wash was still a business providing parking for its customers, and as such, the premises was a "public vehicular area" under this section. State v. Robinette, 124 N.C. App. 212, 476 S.E.2d 387 (1996).

Revocation. —

Where petitioner, who was driving without his license, was stopped and charged with driving while impaired, and then appeared before a magistrate who revoked his driver's license for 10 days, petitioner's license had been validly revoked when he was stopped the next day; thus, he was properly charged with committing a moving violation during a period of revocation by operating a motor vehicle. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

When a person's driver's license is suspended or revoked, it is the surrendering of the privilege to drive, not the license card itself, that is of significance. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

Quoted in McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487, cert. denied, 337 N.C. 694, 448 S.E.2d 528 (1994).

Cited in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994); State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610, cert. denied, 337 N.C. 805, 449 S.E.2d 751 (1994); State v. Crawford, 125 N.C. App. 279, 480 S.E.2d 422 (1997).

OPINIONS OF ATTORNEY GENERAL

Trailers designed to run upon the highways and pulled by a self-propelled vehicle are motor vehicles for the purposes of this Chapter. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

ARTICLE 1A.

Reciprocity Agreements as to Registration and Licensing.

§ 20-4.6: Repealed by Session Laws 1997-122, s. 1, effective December 1, 1997.

ARTICLE 2.

Uniform Driver's License Act.

§ 20-7. Issuance and renewal of drivers licenses.

(a) License Required. — To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. — A Class A license authorizes the holder to drive any of the following:
  a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
  b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. — A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. — A Class C license authorizes the holder to drive any of the following:
  a. A Class C motor vehicle that is not a commercial motor vehicle.
  b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 60 days after becoming a resident.

(a1) Motorcycles and Mopeds. — To drive a motorcycle, a person shall have:

(1) A full provisional license with a motorcycle learner's permit;
(2) A regular drivers license with a motorcycle learner's permit; or
(3) Either:
  a. A full provisional license; or
  b. A regular drivers license, with a motorcycle endorsement.

Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit.

To obtain a motorcycle endorsement, a person shall demonstrate competence to drive a motorcycle by:

(1) Passing a road test;
(2) Passing a written or oral test concerning motorcycles; and
(3) Paying the fee for a motorcycle endorsement.

Neither a drivers license nor a motorcycle endorsement is required to drive a moped.

(a2) Motorcycle Learner's Permit. — The following persons are eligible for a motorcycle learner's permit:

(1) A person who is at least 16 years old but less than 18 years old and has a full provisional license issued by the Division.
(2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant shall pass a vision test, a road sign test, and a written test specified by the Division. A motorcycle learner's permit expires 18 months after it is issued. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit.

(b) Repealed by Session Laws 1993, c. 368, s. 1, c. 533, s. 12, effective January 1, 1995.

(b1) **(Effective until June 30, 1998)** Application. — To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following information:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's social security number. The applicant's social security number shall not be printed on the license and may be released only to the Department of Health and Human Services, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.
(6) The applicant's signature.

The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under this subsection only for the purpose of administering the drivers license laws or to assist the State Child Support Enforcement Program in establishing paternity or establishing or enforcing child support and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 408, and amendments thereto.

(b1) **(Effective June 30, 1998)** Application. — To obtain a drivers license from the Division, a person must complete an

§ 20-7(b1) is set out twice. See notes.

application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following information:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's social security number.
(6) The applicant's signature.

The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the drivers license laws and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii).

(c) Tests. — To demonstrate physical and mental ability, a person must pass an examination. The examination may include road tests, vision tests, oral tests, and, in the case of literate applicants, written tests, as the Division may require. The tests must ensure that an applicant recognizes the handicapped international symbol of access, as defined in G.S. 20-37.5. The Division may not require a person who applies to renew a license that has not expired to take a written test or a road test unless one or more of the following applies:

(1) The person has been convicted of a traffic violation since the person's license was last issued.
(2) The applicant suffers from a mental or physical condition that impairs the person's ability to drive a motor vehicle.

The Division may not require a person who is at least 60 years old to parallel park a motor vehicle as part of a road test.

(c1) Insurance. — The Division may not issue a drivers license to a person until the person has furnished proof of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet

private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

The requirement of furnishing proof of financial responsibility does not apply to a person who applies for a renewal of his or her drivers license.

Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(d) Repealed by Session Laws 1993, c. 368, s. 1, effective January 1, 1995.

(e) Restrictions. — The Division may impose any restriction it finds advisable on a drivers license. It is unlawful for the holder of a restricted license to operate a motor vehicle without complying with the restriction and is the equivalent of operating a motor vehicle without a license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Division. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either restricted or unrestricted, to any person deemed to be incapable of safely operating a motor vehicle. This subsection does not prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) Expiration and Temporary License. — The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.

A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed. A person may apply to the Division to renew a license during the 60-day period before the license expires. The Division may not accept an application for renewal made before the 60-day period begins.

The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

(1) Is serving on active duty in the armed forces of the United States and is stationed outside this State.

(2) Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

(g) Repealed by Session Laws 1979, c. 667, s. 6.

(h) Repealed by Session Laws 1979, c. 113, s. 1.

(i) Fees. — The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

Class of Regular License	Fee for Each Year
Class A	$3.75
Class B	3.75
Class C	2.50

The fee for a motorcycle endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The appropriate fee must be paid before a person receives a regular drivers license or an endorsement.

(i1) Restoration Fee. — Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars ($25.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars ($50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars ($10,000,000), and shall pay a restoration fee of twenty-five dollars ($25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee shall be deposited in the General Fund of the State. The Office of State

Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars ($10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ten million dollars ($10,000,000).

(j) Highway Fund. — The fees collected under this section and G.S. 20-14 shall be placed in the Highway Fund.

(k) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(*l*) Learner's Permit. — A person who is at least 18 years old may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is ten dollars ($10.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder.

(*l*-1) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(m) Instruction Permit. — The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to any of the following applicants:

(1) An applicant who is less than 18 years old and is enrolled in a drivers education program that is approved by the State Superintendent of Public Instruction and is offered at a public high school, a nonpublic secondary school, or a licensed drivers training school.
(2) An applicant for certification under G.S. 20-218 as a school bus driver.

A restricted instruction permit authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division. The restrictions the Division may impose on a permit include restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee. A restricted instruction permit is not required to have a distinguishing number or a picture of the person to whom the permit is issued.

(n) Format. — A drivers license issued by the Division must be tamperproof and must contain all of the following information:

(1) An identification of this State as the issuer of the license.
(2) The license holder's full name.
(3) The license holder's residence address.
(4) A color photograph of the license holder, taken by the Division.
(5) A physical description of the license holder, including sex, height, eye color, and hair color.

(6) The license holder's date of birth.
(7) The license holder's social security number or another identifying number assigned by the Division.
(8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
(9) The license holder's signature.
(10) The date the license was issued and the date the license expires.

The Commissioner may waive the requirement of a color photograph on a license if the license holder proves to the satisfaction of the Commissioner that taking the photograph would violate the license holder's religious convictions. In taking photographs of license holders, the Division must distinguish between license holders who are less than 21 years old and license holders who are at least 21 years old by using different color backgrounds or borders for each group. The Division shall determine the different colors to be used.

At the request of an applicant for a drivers license, a license issued to the applicant must contain the applicant's race.

(o) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(p) The Division must give the clerk of superior court in each county at least 50 copies of the driver license handbook free of charge. The clerk must give a copy to a person who requests it. (1935, c. 52, s. 2; 1943, c. 649, s. 1; c. 787, s. 1; 1947, c. 1067, s. 10; 1949, c. 583, ss. 9, 10; c. 826, ss. 1, 2; 1951, c. 542, ss. 1, 2; c. 1196, ss. 1-3; 1953, cc. 839, 1284, 1311; 1955, c. 1187, ss. 2-6; 1957, c. 1225; 1963, cc. 754, 1007, 1022; 1965, c. 410, s. 5; 1967, c. 509; 1969, c. 183; c. 783, s. 1; c. 865; 1971, c. 158; 1973, cc. 73, 705; c. 1057, s. 1; 1975, c. 162, s. 1; c. 295; c. 296, ss. 1, 2; c. 684; c. 716, s. 5; c. 841; c. 875, s. 4; c. 879, s. 46; 1977, c. 6; c. 340, s. 3; c. 865, ss. 1, 3; 1979, c. 37, s. 1; c. 113; c. 178, s. 2; c. 667, ss. 3-11, 41; c. 678, ss. 1-3; c. 801, ss. 5, 6; 1981, c. 42; c. 690, ss. 8-10; c. 792, s. 3; 1981 (Reg. Sess., 1982), c. 1257, s. 1; 1983, c. 443, s. 1; 1985, c. 141, s. 4; c. 682, ss. 1, 2; 1987, c. 869, ss. 10, 11; 1989, c. 436, ss. 1, 2; c. 771, s. 5; c. 786, s. 4; 1991, c. 478, s. 1; c. 689, s. 325; c. 726, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 27; c. 1030, s. 10; 1993, c. 368, s. 1; c. 533, ss. 2, 3, 12; 1993 (Reg. Sess., 1994), c. 595, ss. 1, 2; c. 750, s. 1; c. 761, s. 1.1; 1995 (Reg. Sess., 1996), c. 675, s. 1; 1997-16, ss. 5, 8, 9; 1997-122, ss. 2, 3; 1997-377, s. 1; 1997-433, s. 4; 1997-443, s. 11A.122; 1997-456, s. 32, 33.)

Subsection (b1) Set Out Twice. — The first version of subsection (b1) set out above is effective until June 30, 1998. The second version of subsection (b1) set out above is effective June 30, 1998.

Editor's Note. —

Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that this act becomes effective December 1, 1997.

Session Laws 1997-16, s. 11 provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The

Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997=443, s. 35.4, is a severability clause.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, inserted "or borders" in the next-to-last sentence of the second paragraph of subsection (n).

Session Laws 1997-16, s. 5, effective December 1, 1997, rewrote the first sentence in subsection (l). See editor's note for applicability.

Session Laws 1997-16, s. 8 and 456, s.32, effective December 1, 1997, rewrote subsection (a1).

Session Laws 1997-16, s. 9, effective December 1, 1997, added subsection (a2).

Session Laws 1997-122, ss. 2 and 3, effective December 1, 1997, substituted "60 days" for "30 days" in the last paragraph of subsection (a) and rewrote the last paragraph of subsection (f).

Session Laws 1997-377, s. 1, effective August 7, 1997, substituted "ten million dollars ($10,000,000)" for "five million dollars ($5,000,000)" throughout subsection (i1).

Session Laws 1997-433, s. 4, effective October 1, 1997, and expiring June 30, 1998, inserted the last two sentences of subdivision (b1)(5); and in the language following subdivision (b1)(6) substituted "42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto" for "42 U.S.C. 405(c)(2)(C)(v)", inserted "or to assist the State Child Support Enforcement Program in establishing paternity or establishing or enforcing child support", and substituted "42 U.S.C. 408, and amendments thereto" for "42 U.S.C. 405(c)(2)(C)(vii)."

Session Laws 1997-443, s. 11A.122, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in subdivision (b1)(5).

Session Laws 1997-456, s. 33, effective December 1, 1997, rewrote subsection (a2).

CASE NOTES

Probable Cause for Arrest. — Where trooper could have placed defendant under arrest for not carrying his driver's license, but merely choose to ask defendant to step back to the patrol car so that he could check defendant's license information and so that he could further investigate defendant's intoxication based upon defendant's unsteady movements and smell of alcohol and after defendant failed field sobriety tests he was placed under arrest and advised of his rights, the seizure was constitutionally permissible and there was sufficient probable cause for arrest. State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

§ 20-7.1. Notice of change of address or name.

(a) Address. — A person whose address changes from the address stated on a drivers license must notify the Division of the change within 60 days after the change occurs. If the person's address changed because the person moved, the person must obtain a duplicate license within that time limit stating the new address. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.

(b) Name. — A person whose name changes from the name stated on a drivers license must notify the Division of the change within 60 days after the change occurs and obtain a duplicate drivers license stating the new name.

(c) Fee. — G.S. 20-14 sets the fee for a duplicate license. (1975, c. 223, s. 1; 1979, c. 970; 1983, c. 521, s. 1; 1997-122, s. 4.)

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, rewrote the section.

§ 20-9. What persons shall not be licensed.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 18.17, provides for the establishment of a Commission to Study the Drivers License Medical Evaluation Program, which shall make a final report to the 1997 General Assembly.

§ 20-9.1. Physicians and psychologists providing medical information on drivers with physical and mental disabilities.

(a) Notwithstanding G.S. 8-53 for physicians and G.S. 8-53.3 for psychologists, or any other law relating to confidentiality of communications between physicians or psychologists and their patients, a physician or a psychologist duly licensed in the State of North Carolina may disclose after consultation with the patient to the Commissioner information about a patient who has a mental or physical disability that the physician or psychologist believes may affect the patient's ability to safely operate a motor vehicle. This information shall be limited to the patient's name, address, date of birth, and diagnosis.

(b) The information provided to the Commissioner pursuant to subsection (a) of this section shall be confidential and shall be used only for the purpose of determining the qualifications of the patient to operate a motor vehicle.

(c) A physician or psychologist disclosing or not disclosing information pursuant to this section is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the physician or psychologist was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. (1997-464, s. 1.)

Editor's Note. — Session Laws 1997-464, s. 3, provides that this section becomes effective September 1, 1997.

§ 20-11. (Effective until August 1, 1998) Application of minors.

(a) Process. — Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1. — Driving with a limited learner's permit.

§ 20-11 is set out twice. See notes.

(2) Level 2. — Driving with a limited provisional license.
(3) Level 3. — Driving with a full provisional license.

A permit or license issued under this section must have a color background or border that indicates the level of driving privileges granted by the permit or license.

(b) Level 1. — A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school.
(2) Passes a written test administered by the Division.

(c) Level 1 Restrictions. — A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.
(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.
(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.
(4) After the first six months after issuance, the permit holder may drive at any time.
(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(d) Level 2. — A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.
(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.
(3) Passes a road test administered by the Division.

(e) Level 2 Restrictions. — A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder must be in possession of the license.
(2) The license holder may drive without supervision in any of the following circumstances:
    a. From 5:00 a.m. to 9:00 p.m.
    b. When driving to or from work.
    c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.
(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of

the front seat, but must be the person seated next to the license holder.

(4) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(f) Level 3. — A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. — The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Out-of-State Exceptions. — A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.

(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

§ 20-11 is set out twice. See notes.

(i) Application. — An application for a permit or license authorized by this section must be signed by both the applicant and another person. That person must be the applicant's parent or guardian if the parent or guardian resides in this State and is qualified to be a supervising driver. In all other circumstances, that person must be an adult approved by the Division.

(j) Duration and Fee. — A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ten dollars ($10.00). The fee for a full provisional license is the amount set under G.S. 20-7(i).

(k) Supervising Driver. — A supervising driver must be a parent or guardian of the permit holder or license holder if a parent or guardian signed the application for the permit or license. If a parent or guardian did not sign the application, the supervising driver must be the adult who signed the application. A supervising driver must be a licensed driver who has been licensed to drive for at least five years.

(*l*) Violations. — It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176.

(m) Insurance Status. — The holder of a limited learner's permit is not considered a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies. (1935, c. 52, s. 6; 1953, c. 355; 1955, c. 1187, s. 8; 1963, c. 968, ss. 2, 2A; 1965, c. 410, s. 3; c. 1171; 1967, c. 694; 1969, c. 37; 1973, c. 191, ss. 1, 2; c. 664, ss. 1, 2; 1975, c. 79; c. 716, s. 5; 1979, c. 101; c. 667, ss. 15, 16, 41; 1981 (Reg. Sess., 1982), c. 1257, s. 2; 1989 (Reg. Sess., 1990), c. 1021, s. 11; 1991, c. 689, s. 326; 1993, c. 539, s. 319; 1994, Ex. Sess., c. 24, s. 14(c); 1997-16, s. 1.)

Section Set Out Twice. — The section is effective until August 1, 1998. For the section amended effective August 1, 1998, see the following section, also numbered § 20-11.

Editor's Note. —

Session Laws 1993, c. 539, s. 319, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that this act becomes effective December 1, 1997.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.20, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — Session Laws 1997-16, s. 1, effective December 1, 1997, rewrote the section. See editor's note for applicability.

CASE NOTES

Presumption of Control. — Subsection (b) creates a presumption that the statutorily approved person occupying the front passenger seat has the right to control and direct the operation of the vehicle. Stanfield v. Tilghman ex rel. Stanfield, 117 N.C. App. 292, 450 S.E.2d 751 (1994), rev'd on other grounds, 342 N.C. 389, 464 S.E.2d 294 (1995).

While front seat passenger who was a licensed driver was presumed to have "the right to control" the vehicle, this presumption does not translate into an irrebuttable presumption "of control" so as to impute negligence or establish contributory negligence, as a matter of law, without regard for exigent circumstances or general negligence principles. Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

Statutorily Approved Person May Recover Damages. — The negligence of a driver, operating an automobile under a valid learner's permit pursuant to subsection (b), is not imputed to the statutorily approved person who occupies the seat next to the permittee and who has the right to control and direct the permittee's operation of the car. Therefore, the statutorily approved person is not precluded from recovering damages for personal injuries sustained as a result of the permittee's sudden negligence. Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

If the permittee's negligent operation of a vehicle was imputed, in all instances as a matter of law to the supervising adult, such adults, including driver education instructors, would be less inclined to serve as supervisors over a permittee's practice driving, thus militating against our public policy and practice regarding drivers' education. Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

Cited in Monk v. Cowan Transp., Inc., 121 N.C. App. 588, 468 S.E.2d 407 (1996).

§ 20-11. (Effective August 1, 1998) Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.

(a) Process. — Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1. — Driving with a limited learner's permit.
(2) Level 2. — Driving with a limited provisional license.
(3) Level 3. — Driving with a full provisional license.

A permit or license issued under this section must have a color background or border that indicates the level of driving privileges granted by the permit or license.

§ 20-11 is set out twice. See notes.

(b) Level 1. — A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school.
(2) Passes a written test administered by the Division.
(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

(c) Level 1 Restrictions. — A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.
(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.
(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.
(4) After the first six months after issuance, the permit holder may drive at any time.
(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(d) Level 2. — A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.
(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.
(3) Passes a road test administered by the Division.
(4) Has a driving eligibility certificate or a high school diploma or its equivalent.

(e) Level 2 Restrictions. — A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder must be in possession of the license.
(2) The license holder may drive without supervision in any of the following circumstances:
    a. From 5:00 a.m. to 9:00 p.m.
    b. When driving to or from work.
    c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.
(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but must be the person seated next to the license holder.

§ 20-11 is set out twice. See notes.

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(4) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(f) Level 3. — A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. — The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Out-of-State Exceptions. — A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following upon the submission of a driving eligibility certificate or a high school diploma or its equivalent:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.

(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be

§ 20-11 is set out twice. See notes.

a motor vehicle moving violation or seat belt infraction if committed in this State.

(i) Application. — An application for a permit or license authorized by this section must be signed by both the applicant and another person. That person must be the applicant's parent or guardian if the parent or guardian resides in this State and is qualified to be a supervising driver. In all other circumstances, that person must be an adult approved by the Division.

(j) Duration and Fee. — A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ten dollars ($10.00). The fee for a full provisional license is the amount set under G.S. 20-7(i).

(k) Supervising Driver. — A supervising driver must be a parent or guardian of the permit holder or license holder if a parent or guardian signed the application for the permit or license. If a parent or guardian did not sign the application, the supervising driver must be the adult who signed the application. A supervising driver must be a licensed driver who has been licensed to drive for at least five years.

(*l*) Violations. — It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176.

(m) Insurance Status. — The holder of a limited learner's permit is not considered a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.

(n) Driving Eligibility Certificate. — A person who desires to obtain a permit or license issued under this section and who does not have a high school diploma or its equivalent must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:
  a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.
  b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.
  c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(2) It must be on a form approved by the Division.

(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.

§ 20-11 is set out twice. See notes.

(4) It must be signed by the applicable person named below:
  a. The principal, or the principal's designee, of the public school in which the person is enrolled.
  b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.
  c. The person who provides the academic instruction in the home school in which the person is enrolled.
  d. The designee of the board of directors of the charter school in which the person is enrolled.
  e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter. (1997-507, s. 1.)

Section Set Out Twice. — The section above is effective August 1, 1998. For the section as in effect until August 1, 1998, see the preceding section, also numbered § 20-11.

Editor's Note. — Session Laws 1997-507, s. 6, effective September 17, 1997, provides that the State Board of Education shall initiate and coordinate meetings in order to develop coordinated rules, policies, and guidelines needed to implement the act.

Session Laws 1997-507, s. 7, effective September 7, 1997, provides the State Board of Education shall study the effectiveness of this act on the dropout rates and progress toward graduation of students under the age of 18 and shall report the results of this study to the Joint Legislative Education Oversight Committee and the Fiscal Division by November 15, 2002.

Session Laws 1997-507, s. 8, effective September 17, 1997, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that agencies are authorized to adopt temporary rules to implement the act.

Session Laws 1997-507, s. 9, effective September 17, 1997, is a severability clause.

Effect of Amendments. — Session Laws 1997-507, s. 1, effective August 1, 1998 and not applicable to any person who holds a valid North Carolina limited learner's permit issued before December 1, 1997, who holds a valid North Carolina learner's permit issued before December 1, 1997, or who is a provisional licensee and holds a valid North Carolina drivers license issued before December 1, 1997, added subdivisions (b)(3), (d)(4), and (f)(3), added "upon the submission of a driving eligibility certificate or a high school diploma or its equivalent" at the end of the introductory language of subsection (h), and added subsection (n).

§ 20-12: Repealed by Session Laws 1997-16, s. 6, effective December 1, 1997.

Editor's Note. — Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that this act becomes effective December 1, 1997.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

§ 20-12.1. Impaired supervision or instruction.

(a) It is unlawful for a person to serve as a supervising driver under G.S. 20-7(l) or G.S. 20-11 or as an approved instructor under G.S. 20-7(m) in any of the following circumstances:

(1) While under the influence of an impairing substance.

(2) After having consumed sufficient alcohol to have, at any relevant time after the driving, an alcohol concentration of 0.08 or more.

(b) An offense under this section is an implied-consent offense under G.S. 20-16.2. (1977, c. 116, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 9; 1993, c. 285, s. 2; 1997-16, s. 7.)

Editor's Note. —

Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.20, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, rewrote the section. See editor's note for applicability.

§ 20-13.2. Grounds for revoking provisional license.

(a) The Division must revoke the license of a person convicted of violating the provisions of G.S. 20-138.3 upon receipt of a record of the licensee's conviction.

(b) If a person is convicted of an offense involving impaired driving and the offense occurs while he is less than 21 years old, his license must be revoked under this section in addition to any other revocation required or authorized by law.

(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S. 20-16.2 while he is less than 21 years old, his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal.

(c1) **(Effective August 1, 1998)** The Division must revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the

§ 20-13.2(c1) has a delayed effective date. See notes.

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requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocation must last until the person's eighteenth birthday or until the Division restores the permit or license under this subsection. The Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.
(2) A driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter.

(d) The length of revocation under this section shall be one year. Revocations under this section run concurrently with any other revocations.

(e) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or
(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1983, c. 435, s. 33; 1987, c. 869, s. 12; 1989, c. 436, s. 3; 1993, c. 285, s. 8; 1995, c. 506, ss. 3, 4, 5; 1997-507, s. 2.)

Editor's Note. —

Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Session Laws 1995, c. 506, ss. 3, 4, 5, which amended this section, were effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date.

Session Laws 1997-507, s. 8, effective September 17, 1997, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that agencies are authorized to adopt temporary rules to implement the act.

Session Laws 1997-507, s. 9, effective September 17, 1997, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 1, 1998 and not applicable to any person who holds a valid North Carolina limited learner's permit issued before December 1, 1997, who holds a valid North Carolina learner's permit issued before December 1, 1997, or who is a provisional licensee and holds a valid North Carolina drivers license issued before December 1, 1997, added subsection (c1).

§ 20-14. Duplicate licenses.

A person may obtain a duplicate of a license issued by the Division by paying a fee of ten dollars ($10.00) and giving the Division satisfactory proof that any of the following has occurred:

(1) The person's license has been lost or destroyed.

(2) It is necessary to change the name or address on the license.

(3) Because of age, the person is entitled to a license with a different color photographic background or a different color border.

(4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired. (1935, c. 52, s. 9; 1943, c. 649, s. 2; 1969, c. 783, s. 2; 1975, c. 716, s. 5; 1979, c. 667, s. 41; 1981, c. 690, s. 11; 1983, c. 443, s. 3; 1991, c. 682, s. 2; c. 689, s. 327; 1991 (Reg. Sess., 1992), c. 1007, s. 28; 1995 (Reg. Sess., 1996), c. 675, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added "or a different color border" to the end of subdivision (3).

§ 20-15.1. Revocations when licensing privileges forfeited.

The Division shall revoke the license of a person whose licensing privileges have been forfeited under G.S. 15A-1331A, 50-13.12, and 110-142.2. If a revocation period set by this Chapter is longer than the revocation period resulting from the forfeiture of licensing privileges, the revocation period in this Chapter applies. (1994, Ex. Sess., c. 20, s. 2; 1995, c. 538, s. 2(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 20, s. 6, made this section effective May 1, 1994, and applicable to offenses committed on or after that date.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to child support owed on or after that date, deleted "after conviction of a crime" from the end of the catchline, and inserted "50-13.12, and 110-142.2" following "G.S. 15A-1331A".

§ 20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding; limited driving permits for first offenders.

(a) Notwithstanding any other provisions of this Article, the Division shall suspend for a period of 30 days the license of any driver without preliminary hearing on receiving a record of the driver's conviction of either (i) exceeding by more than 15 miles per hour the speed limit, either within or outside the corporate limits of a municipality, if the person was also driving at a speed in excess of 55 miles per hour at the time of the offense, or (ii) driving at a speed in excess of 80 miles per hour at the time of the offense.

(b)(1) Upon a first conviction only of violating subsection (a), the trial judge may when feasible allow a limited driving privilege or license to the person convicted for proper purposes reasonably connected with the health, education and welfare of the person convicted and his family. For purposes of determining whether conviction is a first conviction, no prior offense occurring more than seven years before the date of the current offense shall be considered. The judge may impose upon such limited driving privilege any restrictions as in his discretion are deemed advisable including, but not limited to, conditions of days, hours, types of vehicles, routes, geographical boundaries and specific purposes for which limited driving privilege is allowed. Any such limited driving privilege allowed and restrictions imposed thereon shall be specifically recorded in a written judgment which shall be as near as practical to that hereinafter set forth and shall be signed by the trial judge and shall be affixed with the seal of the court and shall be made a part of the records of the said court. A copy of said judgment shall be transmitted to the Division of Motor Vehicles along with any driver's license in the possession of the person convicted and a notice of the conviction. Such permit issued hereunder shall be valid for 30 days from the date of issuance by trial court. Such permit shall constitute a valid license to operate motor vehicles of the class or type that would be allowed by the person's license if it were not currently revoked upon the streets and highways of this or any other state in accordance with the restrictions noted thereon and shall be subject to all provisions of law relating to driver's license, not by their nature, rendered inapplicable.

(2) The judgment issued by the trial judge as herein permitted shall as near as practical be in form and content as follows:

IN THE GENERAL COURT
OF JUSTICE
RESTRICTED DRIVING
PRIVILEGES

STATE OF NORTH
CAROLINA
COUNTY OF ....

This cause coming on to be heard and being heard before the Honorable ...., Judge presiding, and it appearing to the court that the defendant, ..., has been convicted of the offense of excessive speeding in violation of G.S. 20-16.1(a), and it further appearing to the court that the defendant should be issued a restrictive driving license and is entitled to the issuance of a restrictive driving privilege under and by the authority of G.S. 20-16.1(b);

Now, therefore, it is ordered, adjudged and decreed that the defendant be allowed to operate a motor vehicle under the following conditions and under no other circumstances.

Name: ....
Race: .... Sex: ....
Height: .... Weight: ....
Color of Hair: .... Color of Eyes: ....
Birth Date: ....
Driver's License Number: ....
Signature of Licensee: .... Conditions of Restriction: . .
Type of Vehicle: ....
Geographic Restrictions: ....
Hours of Restriction: ....
Other Restrictions: ....

This limited license shall be effective from ..... to ..... subject to further orders as the court in its discretion may deem necessary and proper.

This the .... day of ...., 19....

....
(Judge Presiding)

(3) Upon conviction of such offense outside the jurisdiction of this State the person so convicted may apply to the resident judge of the superior court of the district or set of districts as defined in G.S. 7A-41.1(a) in which he resides for limited driving privileges hereinbefore defined. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he were the trial judge.

(4) Any violation of the restrictive driving privileges as set forth in the judgment of the trial judge allowing such privileges shall constitute the offense of driving while license has been suspended as set forth in G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the restrictions, the limited driving privilege shall be suspended pending the final disposition of the charge.

(5) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing

provision contained in the General Statutes of North Carolina.

(c) Upon conviction of a similar second or subsequent offense which offense occurs within one year of the first or prior offense, the license of such operator shall be suspended for 60 days, provided such first or prior offense occurs subsequent to July 1, 1953.

(d) Notwithstanding any other provisions of this Article, the Division shall suspend for a period of 60 days the license of any driver without preliminary hearing on receiving a record of such driver's conviction of having violated the laws against speeding described in subsection (a) and of having violated the laws against reckless driving on the same occasion as the speeding offense occurred.

(e) The provisions of this section shall not prevent the suspension or revocation of a license for a longer period of time where the same may be authorized by other provisions of law.

(f) Repealed by Session Laws 1987, c. 869, s. 14, effective January 1, 1988.

(g) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1953, c. 1223; 1955, c. 1187, s. 15; 1959, c. 1264, s. 4; 1965, c. 133; 1975, c. 716, s. 5; c. 763; 1979, c. 667, ss. 19, 41; 1983, c. 77; 1987, c. 869, ss. 13, 14; 1989, c. 436, s. 4; 770, s. 57; 1995 (Reg. Sess., 1996), c. 652, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, in subsection (a), substituted "the driver's conviction of either (i)" for "such driver's conviction of", substituted "the person" for "such person", and added "or, (ii) driving at a speed in excess of 80 miles per hour at the time of the offense."

§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. — Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.
(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.
(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.
(4) The person's driving privilege will be revoked immediately for at least 30 days if:
  a. The test reveals an alcohol concentration of 0.08 or more; or
  b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. — Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. — If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis; Procedure upon Refusal. — The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. — Upon receipt of a properly executed affidavit required by subsection (c), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent offense;
(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense;
(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;
(4) The person was notified of his or her rights as required by subsection (a); and
(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. — If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. — If the revocation is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. — A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;
(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;
(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;
(4) The implied-consent offense charged did not involve death or critical injury to another person;
(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
  a. Other than by conviction; or
  b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;
(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;
(7) The person's license has been revoked for at least six months for the refusal; and
(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. — When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. — A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant. (1963, c. 966, s. 1; 1965, c. 1165; 1969, c. 1074, s. 1; 1971, c. 619, ss. 3-6; 1973, c. 206, ss. 1, 2; cc. 824, 914; 1975, c. 716, s. 5; 1977, c. 812; 1979, c. 423, s. 2; 1979, 2nd Sess., c. 1160; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 87; c. 435, s. 11; 1983 (Reg. Sess., 1984), c. 1101, ss. 5-8; 1987, c. 797, s. 3; 1987 (Reg. Sess., 1988), c. 1037, ss. 76, 77; 1989, c. 771, ss. 13, 14; 1991, c. 689, s. 233.1(c); 1993, c. 285, ss. 3, 4; 1995, c. 163, s. 1; 1997-379, ss. 3.1-3.3.)

Editor's Note. —
Session Laws 1997-379, s. 7, provides in part: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Effect of Amendments. — Session Laws 1997-379, ss. 3.1-3.3, effective December 1, 1997, and applicable to offenses committed on or after that date, substituted "shall" for "must" throughout the section; substituted "30 days" for "10 days" in subdivisions (a)(2) and (a)(4); added subdivision (e1)(8) and made related changes; substituted "30 days" for "10 days" in subdivision (i)(2); and made a stylistic change.

Legal Periodicals. —
For note, "North Carolina and Pretrial Civil Revocation of an Impaired Driver's License and the Double Jeopardy Clause," see 18 Campbell L. Rev. 391 (1996).

CASE NOTES

I. In General.
II. Administration of Test.
III. Revocation of License for Refusal to Take Test.
IV. Evidence in Prosecution for Drunken Driving.

I. IN GENERAL.

Though this section must be read in conjunction with § 20-139.1 to determine the procedures governing the administering of chemical analyses, this section, and that statute alone, sets forth the procedures governing notification of rights pursuant to a chemical analysis. Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994).

Effect of Refusal. — Persons being requested to submit to chemical analysis do not have to be informed that a refusal can result in the denial of their right to seek a limited driving privilege as a part of the notification requirement of this section. Nowell v. Killens, 119 N.C. App. 567, 459 S.E.2d 37 (1995).

Unconscious Driver. —

Where defendant was already sedated and unconscious when a police officer arrived at a hospital to obtain a blood sample for chemical analysis such that officer did not advise defendant of his right to refuse the test, the trial court properly concluded that defendant was rendered unconscious by the doctors based solely on a medical decision to treat him, that the officer had nothing to do with this decision, and that defendant's statutory rights were not violated in that the officer who conducted the chemical analysis complied with the requirements of this section and § 20-139.1. State v. Garcia-Lorenzo, 110 N.C. App. 319, 430 S.E.2d 290 (1993).

Notice. — Police officer's placement of written rights form with defendant's emergency room chart was tantamount to "giving" defendant notice in writing; in light of the treatment defendant was receiving for his injuries, there was effectively no other means by which the notice could have been given to him. State v. Lovett, 119 N.C. App. 689, 460 S.E.2d 177 (1995).

Reasonable Grounds Synonymous with Probable Cause. — In determining whether a charging officer had reasonable grounds to believe a petitioner committed an implied consent offense within the meaning of this section, the term reasonable grounds should be viewed as synonymous with probable cause. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

Relation to DWI Charge. — The decision by Division of Motor Vehicles (DMV) to rescind the revocation of defendant's driver's license was independent of, and inconsequential to, defendant's criminal trial for driving while impaired (DWI). State v. O'Rourke, 114 N.C. App. 435, 442 S.E.2d 137 (1994).

The quantum of proof necessary to establish probable cause to arrest in criminal driving while impaired cases and civil license revocation proceedings, notwithstanding the different burdens on the remaining elements, is virtually identical. Brower v. Killens, 122 N.C. App. 685, 472 S.E.2d 33 (1996).

Applied in State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993); State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994).

Cited in Melton v. Hodges, 114 N.C. App. 795, 443 S.E.2d 83 (1994); Nowell v. Killens, 119 N.C. App. 567, 459 S.E.2d 37 (1995); State v. Pyatt, 125 N.C. App. 147, 479 S.E.2d 218 (1997).

II. ADMINISTRATION OF TEST.

Right to Have a Witness to Breathalyzer Test. —

Where officer refused defendant's unequivocal request that his wife be permitted to observe his taking of breathalyzer test, the trial court erred in admitting the results of the breathalyzer test at trial; fact that defendant later did take the breathalyzer, after he was first refused permission to have his wife witness the test, could not be construed to be a waiver of his right to have a witness. State v. Myers, 118 N.C. App. 452, 455 S.E.2d 492 (1995).

Subsection (a) Complied with. —

Where defendant was informed of his rights, signed a form containing those rights and submitted to the chemical analysis, defendant was adequately notified of his rights as required by subsection (a). State v. Watson, 122 N.C. App. 596, 472 S.E.2d 28 (1996).

III. REVOCATION OF LICENSE FOR REFUSAL TO TAKE TEST.

Driver's willful refusal to submit to a chemical analysis could be used

to revoke his driver's license even though the arrest was not in compliance with § 15A-401 (b)(2). Quick v. North Carolina DMV, 125 N.C. App. 123, 479 S.E.2d 226 (1997).

Failure to Follow Instructions As Willful Refusal. — Evidence showed that petitioner failed to follow the instructions of the breathalyzer operator where he repeatedly put his fingers in his mouth and failed to blow long enough into the machine to get a sufficient sample; failure to follow the instructions of the breathalyzer operator is an adequate basis for the trial court to conclude that petitioner willfully refused to submit to a chemical analysis. Tedder v. Hodges, 119 N.C. App. 169, 457 S.E.2d 881 (1995).

But Is Sufficient in Absence of Timely Objection. —

Trooper's failure to comply with subsection (a) in the face of petitioner's refusal to submit resulted in the rescission of the revocation of petitioner's license. Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994).

IV. EVIDENCE IN PROSECUTION FOR DRUNKEN DRIVING.

Consideration of Alcosensor Results. — It is permissible to consider the results of alcosensor test in determining whether trooper had reasonable grounds to believe petitioner had committed an implied consent offense. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

Other Officer Not Required to Advise Defendant. — Subsection (a) does not require an officer, other than the charging officer, to advise defendants of their statutory rights in order for the state to admit into evidence, at the criminal prosecution for driving while impaired, the results of, or refusal to submit to, chemical analysis. State v. Abdereazeq, 122 N.C. App. 727, 471 S.E.2d 445 (1996).

Reasonable Grounds Shown. — The evidence surrounding petitioner's accident, including the reason for its occurrence, taken with the odor of alcohol about petitioner, her mumbled speech, her admission that she had been drinking liquor earlier, and the results of the alcosensor test were clearly sufficient to give trooper reasonable grounds to believe that petitioner had been driving while impaired. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by Commission for Health Services; use of test results or refusal.

CASE NOTES

Consideration of Alcosensor Results. — It is permissible to consider the results of alcosensor test in determining whether trooper had reasonable grounds to believe petitioner had committed an implied consent offense. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

§ 20-16.3A. Impaired driving checks.

CASE NOTES

Checking Station in Accord with Guidelines. — Where the findings showed that checking station was conducted in accordance with required guidelines, motion to suppress was not proper. State v. Barnes, 123 N.C. App. 144, 472 S.E.2d 784 (1996).

§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

(a) **(Effective until July 1, 1998)** Definitions. — As used in this section the following words and phrases have the following meanings:

(1) Charging Officer. — As described in G.S. 20-16.2(a1).
(2) Clerk. — As defined in G.S. 15A-101(2).
(3) Judicial Official. — As defined in G.S. 15A-101(5).
(4) Revocation Report. — A sworn statement by a charging officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been met. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.
(5) Surrender of a Driver's License. — The act of turning over to a court or a law enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license.

(a) **(Effective July 1, 1998)** Definitions. — As used in this section the following words and phrases have the following meanings:

(1) Charging Officer. — As described in G.S. 20-16.2(a1).
(2) Clerk. — As defined in G.S. 15A-101(2).
(3) Judicial Official. — As defined in G.S. 15A-101(5).
(4) Revocation Report. — A sworn statement by a charging officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been met, and whether the person has a pending offense for which their license had been or is revoked under this section. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.
(5) Surrender of a Driver's License. — The act of turning over to a court or a law-enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license.

(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle. — A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
(2) The person is charged with that offense as provided in G.S. 20-16.2(a);
(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and
(4) The person:
  a. Willfully refuses to submit to the chemical analysis;
  b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; or
  c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial vehicle.

(b1) Precharge Test Results as Basis for Revocation. — Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:
(1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and
(2) He has:
  a. An alcohol concentration of 0.08 or more at any relevant time after driving; or
  b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; and
(3) He is charged with an implied-consent offense.

(c) Duty of Charging Officers and Chemical Analysts to Report to Judicial Officials. — If a person's driver's license is subject to revocation under this section, the charging officer and the chemical analyst must execute a revocation report. If the person has refused to submit to a chemical analysis, a copy of the affidavit to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains the information required by this section. It is the specific duty of the charging officer to make sure that the report is expeditiously filed with a judicial official as required by this section.

(d) Which Judicial Official Must Receive Report. — The judicial official with whom the revocation report must be filed is:
(1) The judicial official conducting the initial appearance on the underlying criminal charge if:
  a. No revocation report has previously been filed; and
  b. At the time of the initial appearance the results of the chemical analysis, if administered, or the reports indicating a refusal, are available.
(2) A judicial official conducting any other proceeding relating to the underlying criminal charge at which the person is present, if no report has previously been filed.
(3) The clerk of superior court in the county in which the underlying criminal charge has been brought if subdivisions (1) and (2) are not applicable at the time the charging officer must file the report.

(e) **(Effective until July 1, 1998)** Procedure if Report Filed with Judicial Official When Person Is Present. — If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person,

§ 20-16.5(e) is set out twice. See notes.

determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until 30 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division.

(e) **(Effective July 1, 1998)** Procedure if Report Filed with Judicial Official When Person Is Present. — If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been revoked for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working

§ 20-16.5(e) is set out twice. See notes.

days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division.

(f) **(Effective until July 1, 1998)** Procedure if Report Filed with Clerk of Court When Person Not Present. — When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall mail to the person a revocation order by first-class mail. The order shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Forty-five days from the time:

  a. The person's drivers license is picked up by a law-enforcement officer following service of a pick-up order; or

  b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

  c. The person's drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

  d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order shall deposit it with the clerk within three days of the surrender.

(f) **(Effective July 1, 1998)** Procedure if Report Filed with Clerk of Court When Person Not Present. — When a clerk receives a properly executed report under subdivision (d) (3) and the person named in the revocation report is not present before the clerk, the clerk shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall mail to the person a revocation order by first-class mail. The order shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. If the person has no pending offenses for which his license had been or is revoked under this section, the period of revocation under this subsection is:

(1) Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Forty-five days from the time:

  a. The person's drivers license is picked up by a law-enforcement officer following service of a pick-up order; or

  b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

  c. The person's drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

§ 20-16.5(f) is set out twice. See notes.

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d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event may the period of revocation for the current offense be less than the applicable period of revocation in subdivision (1), (2), or (3) of this subsection. When a pick-up order is issued, it shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order shall deposit it with the clerk within three days of the surrender.

(g) Hearing before Magistrate or Judge if Person Contests Validity of Revocation. — A person whose license is revoked under this section may request in writing a hearing to contest the validity of the revocation. The request may be made at the time of the person's initial appearance, or within 10 days of the effective date of the revocation to the clerk or a magistrate designated by the clerk, and may specifically request that the hearing be conducted by a district court judge. The Administrative Office of the Courts must develop a hearing request form for any person requesting a hearing. Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district judge to conduct such hearings. If the person requests that a district court judge hold the hearing, the hearing must be conducted within the district court district as defined in G.S. 7A-133 by a district court judge assigned to conduct such hearings. The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if the hearing is before a district court judge. The request for the hearing must specify the grounds upon which the validity of the revocation is challenged and the hearing must be limited to the grounds specified in the request. A witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he is not satisfied with the accuracy or completeness of evidence. The person contesting the validity of the revocation may, but is not required to, testify in his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under subsection (b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the conclusion of the hearing the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the person contesting the revocation and to any other potential party as to any other proceedings, civil or criminal, that may involve facts bearing upon the conditions in subsection (b) considered by the judicial official. The decision of the judicial official is final and may not be appealed in the General Court of Justice. If the hearing is not held and completed within three working days of the written request for a hearing before a magistrate or within five working days of the written request for a hearing before a district court judge, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay in completing the hearing. If the person requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he forfeits his right to a hearing.

(h) Return of License. — After the applicable period of revocation under this section, or if the magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of his surrendered license. Unless the clerk finds that the person is not eligible to use the surrendered license, he must return it if:

(1) The applicable period of revocation has passed and the person has tendered payment for the costs under subsection (j); or

(2) The magistrate or judge has ordered the revocation rescinded.

If the license has expired, he may return it to the person with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the license and the license was issued by the Division or in another state, the clerk must mail it to the Division. If the person has surrendered his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make a record that he has withheld the limited driving privilege and forward that record to the clerk in the county in which the limited driving privilege was issued for filing in the case file. If the person's license is revoked under this section and under another section of this Chapter, the clerk must surrender the license to the Division if the revocation under this section can terminate before the other revocation; in such cases, the costs required by subsection (j) must still be paid before the revocation under this section is terminated.

(i) Effect of Revocations. — A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.5(p).

(j) Costs. — Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of fifty dollars ($50.00) as costs for the action before the person's license may be returned under subsection (h). The costs collected under this section shall be credited to the General Fund. Fifty percent (50%) of the costs collected shall be used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of the Department of Health and Human Services.

(k) **(Effective until July 1, 1998)** Report to Division. — Except as provided below, the clerk shall mail a report to the Division

§ 20-16.5(k) is set out twice. See notes.

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within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report shall identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 30-day period had elapsed.

(k) **(Effective July 1, 1998)** Report to Division. — Except as provided below, the clerk shall mail a report to the Division:

(1) If the license is revoked indefinitely, within 10 working days of the revocation of the license; and

(2) In all cases, within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed.

The report shall identify the person whose license has been revoked, specify the date on which his license was revoked, and indicate whether the license has been returned. The report must also provide, if applicable, whether the license is revoked indefinitely. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 30-day period had elapsed.

(*l*) Restoration Fee for Unlicensed Persons. — If a person whose license is revoked under this section has no valid license, he must pay the restoration fee required by G.S. 20-7 before he may apply for a license from the Division.

(m) Modification of Revocation Order. — Any judicial official presiding over a proceeding under this section may issue a modified order if he determines that an inappropriate order has been issued.

(n) Exception for Revoked Licenses. — Notwithstanding any other provision of this section, if the judicial official required to issue a revocation order under this section determines that the person whose license is subject to revocation under subsection (b):

(1) Has a currently revoked driver's license;

(2) Has no limited driving privilege; and

(3) Will not become eligible for restoration of his license or for a limited driving privilege during the period of revocation required by this section,

the judicial official need not issue a revocation order under this section. In this event the judicial official must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he relies in making his determination.

(o) Designation of Proceedings. — Proceedings under this section are civil actions, and must be identified by the caption "In the Matter of ______" and filed as directed by the Administrative Office of the Courts.

(p) **(Effective until July 1, 1998)** Limited Driving Privilege. — A person whose drivers license has been revoked under this section may apply for a limited driving privilege if:

§ 20-16.5(p) is set out twice. See notes.

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(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;
(2) Does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked under this section or additional convictions of an offense involving impaired driving since being charged for the violation for which the license is currently revoked under this section;
(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and
(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(p) **(Effective July 1, 1998)** Limited Driving Privilege. — A person whose drivers license has been revoked for a specified period of 30 or 45 days under this section may apply for a limited driving privilege if:

(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;
(2) Does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked under this section or additional convictions of an offense involving impaired driving since being charged for the violation for which the license is currently revoked under this section;
(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and
(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

A person whose license has been indefinitely revoked under this section may, after completion of 30 days under subsection (e) or the applicable period of time under subdivision (1), (2), or (3) of subsection (f), apply for a limited driving privilege. In the case of an indefinite revocation, a judge of the division in which the current offense is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the eligibility requirements of G.S. 20-179.3, except that the requirements in G.S. 20-179.3(b)(1)c. and G.S. 20-179.3(e) shall not apply. Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid. (1983, c. 435, s. 14; 1983 (Reg. Sess., 1984), c. 1101, ss. 11-17; 1985, c. 690, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 80; 1989, c. 771, ss. 15, 16; 1991, c. 689, s. 233.1(a); 1993, c. 285, ss. 5, 6; 1997-379, ss. 3.4-3.8; 1997-443, s. 11A.9; 1997-486, ss. 2-6.)

Subsections (a), (e), (f), (k) and (p) Set Out Twice. — The first versions of subsections (a), (e), (f), (k) and (p) set out above are effective until July 1, 1998. The second versions of subsections (a), (e), (f), (k) and (p) set out above are effective July 1, 1998.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1 provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 26.5, provides that amounts collected under section (j) of this section and designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources, for fiscal years 1993-94 and 1994-95 shall not revert to the General Fund unless the amounts exceed the amounts appropriated for those years, and beginning with the 1995-96 fiscal year, funds not needed for that program shall be transferred annually to the Governor's Highway Safety Program for grants to local law enforcement agencies for training and enforcement of the laws on driving while impaired.

Session Laws 1995, c. 324, s. 28.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1997-379, s. 7, provides in part: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-379, ss. 3.4-3.8, effective December 1, 1997, and applicable to offenses committed on or after that date, added subsection (p); substituted "shall" for "must" throughout the section; twice substituted "30 days" for "10 days" in subsection (e); substituted "Thirty days" for "Ten days" in subdivisions (f)(1) and (f)(2); substituted "Forty-five days" from "Thirty days" in subdivision (f)(3); substituted the present last sentence in subsection (i) for "A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section"; and substituted "30-day" for "ten-day" twice in subsection (k).

Session Laws 1997-443, s. 11A.9, effective August 28, 1997, substituted "Heath and Human Services" for "Environment, Health, and Natural Resources" in subsection (j).

Session Laws 1997-486, ss. 2-6, effective July 1, 1998, inserted "and whether the person has a pending offense for which their license had been or is revoked under this section" in subdivision (a)(4); in subsection (e), deleted "Unless the person is not currently licensed" at the beginning of the sixth sentence, substituted "revoked for the period specified in this subsection, and the person has paid the applicable costs" for "surrendered for 30 days and the person has paid the applicable costs" at the end of that sentence, and substituted the seventh, eighth and ninth sentences for the former seventh sentence, relating to the revocation period for a person not currently licensed; in subsection (f), inserted "If the person has no pending offenses for which his license had been or is revoked under this section" at the beginning of the eighth sentence, and inserted the ninth sentence; in subsection (k), inserted subdivision (1) and "(2) In all cases" in the first sentence, added "and indicate whether the license has been returned" and made a related change in the second sentence, and added the third sentence; and in subsection (p), inserted "for a specifed perod of 30 or 45 days" in the introductory language of the first paragraph, and added the first two sentences of the second paragraph.

Legal Periodicals. — For note, "North Carolina and Pretrial Civil Revocation of an Impaired Driver's License and the Double Jeopardy Clause," see 18 Campbell L. Rev. 391 (1996).

CASE NOTES

Constitutionality. —

The ten-day driver's license revocation under this section did not constitute punishment as such, and therefore, defendant's subsequent criminal conviction for DWI did not violate the Double Jeopardy Clause. State v. Oliver, 343 N.C. 202, 470 S.E.2d 16 (1996).

Revocation of one's driver's license under this section and subsequent convictions of DWI under § 20-138.1 do not violate the prohibition against double jeopardy. State v. Rogers, 124 N.C. App. 364, 477 S.E.2d 221 (1996).

Revocation Proper. — Where petitioner, who was driving without his license, was stopped and charged with driving while impaired, and then appeared before a magistrate who revoked his driver's license for 10 days, petitioner's license had been validly revoked when he was stopped the next day; thus, he was properly charged with committing a moving violation during a period of revocation by operating a motor vehicle. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

§ 20-17. Mandatory revocation of license by Division.

(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

- (1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.
- (2) Either of the following impaired driving offenses:
  - a. Impaired driving under G.S. 20-138.1.
  - b. Impaired driving under G.S. 20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.
- (3) Any felony in the commission of which a motor vehicle is used.
- (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).
- (5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.
- (6) Conviction upon two charges of reckless driving committed within a period of 12 months.
- (7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Death by vehicle as defined in G.S. 20-141.4.

(10) Repealed by Session Laws 1997-443, s. 19.26(b), effective December 1, 1997.

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7.

(b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division shall:

(1) Ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110-142.2 or G.S. 50-13.12. The obligor shall not be entitled to any other hearing before the Division as a result of the revocation of his license pursuant to G.S. 110-142.2 or G.S. 50-13.12; or

(2) Revoke the drivers license of any person who has willfully failed to complete court-ordered community service and a court has issued a revocation order. This revocation shall continue until the Division receives certification from the clerk of court that the person has completed the court-ordered community service. No person whose drivers license is revoked pursuant to this subdivision shall be entitled to any other hearing before the Division as a result of this revocation. (1935, c. 52, s. 12; 1947, c. 1067, s. 14; 1967, c. 1098, s. 2; 1971, c. 619, s. 7; 1973, c. 18, s. 1; c. 1081, s. 3; c. 1330, s. 2; 1975, c. 716, s. 5; c. 831; 1979, c. 667, ss. 20, 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 15; 1989, c. 771, s. 11; 1991, c. 726, s. 7; 1993 (Reg. Sess., 1994), c. 761, s. 1; 1995, c. 506, s. 7; c. 538, s. 2(b); 1997-234, s. 3; 1997-443, s. 19.26(b).)

Editor's Note. — Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

The subsection (b) designation was assigned by the Revisor of Statutes, the designation in Session Laws 1995, c. 538, s. 2(b) having been subdivision (12); the subsection (a) designation was added as well.

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 1, which amended this section, was effective October 1, 1994, and applicable to offenses occurring on or after that date.

Session Laws 1995, c. 506, s. 7, which amended this section was effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 538, s. 2(b), effective January 1, 1996, and applicable to child support owed on or after that date, added subsection (b).

Session Laws 1997-234, s. 3, effective

October 1, 1997, and applicable to any person hired or to any person notified of a hearing to determine if the person has willfully failed to perform community service on or after that date, added the subdivision (b)(1) designation and added subdivision (b)(2); and made related changes.

Session Laws 1997-443, s. 19.26(b), effective December 1, 1997, and applicable to offenses committed on or after that date, repealed subdivision (a)(10), which read "speeding in excess of 55 miles per hour and at least 15 miles per hour over the legal limit in violation of G.S. 20-141(j)."

§ 20-17.6. Restoration of a license after a conviction of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.

(a) Scope. — This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

(1) G.S. 20-138.1, driving while impaired (DWI).

(2) G.S. 20-138.2, commercial DWI, if the person's license was revoked under G.S. 20-17(2).

(3) G.S. 20-138.3, driving while less than 21 years old after consuming alcohol or drugs.

(b) Requirement for Restoring License. — The Division must receive a certificate of completion for a person who is subject to this section before the Division can restore that person's license. The revocation period for a person who is subject to this section is extended until the Division receives the certificate of completion.

(c) Certificate of Completion. — To obtain a certificate of completion, a person must have a substance abuse assessment and, depending on the results of the assessment, must complete either an alcohol and drug education traffic (ADET) school or a substance abuse treatment program. The substance abuse assessment must be conducted by one of the entities authorized by the Department of Health and Human Services to conduct assessments. G.S. 122C-142.1 describes the procedure for obtaining a certificate of completion.

(d) Notice of Requirement. — When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the local area mental health, developmental disabilities, and substance abuse program for a list of agencies and entities in the person's area that are authorized to make a substance abuse assessment and provide the education or treatment needed to obtain a certificate of completion.

(e) Effect on Limited Driving Privileges. — A person who is subject to this section is not eligible for limited driving privileges if the revocation period for the offense that caused the person to become subject to this section has ended and the person's license remains revoked only because the Division has not obtained a certificate of completion for that person. The issuance of limited driving privileges during the revocation period for the offense that caused the person to become subject to this section is governed by the statutes that apply to that offense. (1995, c. 496, ss. 1, 11, 12; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1995, c. 496, s. 14, provides that this section becomes effective January 1, 1996, and is applicable to offenses occurring on or after that date, and that ss. 11 and 12, which substituted "less than 21 years old" for "a provisional licensee" in the catchline and in subdivision (a)(3), would become effective only if House Bill 353 of the 1995 General Assembly was enacted. House Bill 353 was ratified as Session Laws 1995, c. 506, on July 28, 1995.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 20-19. Period of suspension or revocation.

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1935, c. 52, s. 13; 1947, c. 1067, s. 15; 1951, c. 1202, ss. 2-4; 1953, c. 1138; 1955, c. 1187, ss. 13, 17, 18; 1957, c. 499, s. 2; c. 515, s. 1; 1959, c. 1264, s. 11A; 1969, c. 242; 1971, c. 619, ss. 8-10; 1973, c. 1445, ss. 1-4; 1975, c. 716, s. 5; 1979, c. 903, ss. 4-6; 1981, c. 412, s. 4; c. 747, ss. 34, 66; 1983, c. 435, s. 17; 1983 (Reg. Sess., 1984), c. 1101, s. 18; 1987, c. 869, s. 12; 1989, c. 436, s. 5; 1995, c. 506, s. 8.)

Editor's Note. —

Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Session Laws 1995, c. 506, s. 8, which amended this section, was effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date.

CASE NOTES

The purpose of this section is to provide a uniform standard period for the withholding of the privilege to operate a motor vehicle following certain offenses. Wagoner v. Hiatt, 111 N.C. App. 448, 432 S.E.2d 417 (1993).

Subsections (d) and (j) of this section must be read together, giving consideration both to the legislative intent of ensuring standard penalties for the same offenses and to the policy of preventing circumvention of this section. Wagoner v. Hiatt, 111 N.C. App. 448, 432 S.E.2d 417 (1993).

§ 20-24. When court or child support enforcement agency to forward license to Division and report convictions, child support delinquencies, and prayers for judgment continued.

(a) License. — A court that convicts a person of an offense that requires revocation of the person's drivers license or revokes a person's drivers license pursuant to G.S. 50-13.12 shall require the person to give the court any regular or commercial drivers license issued to that person. A court that convicts a person of an offense that requires disqualification of the person but would not require revocation of a regular drivers license issued to that person shall require the person to give the court any Class A or Class B regular drivers license and any commercial drivers license issued to that person.

The clerk of court in a non-IV-D case, and the child support enforcement agency in a IV-D case, shall accept a drivers license required to be given to the court under this subsection. A clerk of court or the child support enforcement agency who receives a drivers license shall give the person whose license is received a copy of a dated receipt for the license. The receipt must be on a form approved by the Commissioner. A revocation or disqualification for which a license is received under this subsection is effective as of the date on the receipt for the license.

The clerk of court or the child support enforcement agency shall notify the Division of a license received under this subsection either by forwarding to the Division the license, a record of the conviction for which the license was received, a copy of the court order revoking the license for failure to pay child support for which the license was received, and the original dated receipt for the license or by electronically sending to the Division the information on the license, the record of conviction or court order revoking the license for failure to pay child support, and the receipt given for the license. The clerk of court or the child support enforcement agency must forward the required items unless the Commissioner has given the clerk of court or the child support enforcement agency approval to notify the Division electronically. If the clerk of court or the child support enforcement agency notifies the Division electronically, the clerk of court or the child support enforcement agency must destroy a license received after sending to the Division the required information. The clerk of court or the child support enforcement agency shall notify the Division within 30 days after entry of the conviction or court order revoking the license for failure to pay child support for which the license was received.

(b) Convictions, Court Orders of Drivers License Revocations, and PJCs. — The clerk of court shall send the Division a record of any of the following:

(1) A conviction of a violation of a law regulating the operation of a vehicle.

(2) A conviction for which the convicted person is placed on probation and a condition of probation is that the person not drive a motor vehicle for a period of time, stating the period of time for which the condition applies.

(3) A conviction of a felony in the commission of which a motor vehicle is used, when the judgment includes a finding that a motor vehicle was used in the commission of the felony.

(4) A conviction that requires revocation of the drivers license of the person convicted and is not otherwise reported under subdivision (1).

(4a) A court order revoking drivers license pursuant to G.S. 50-13.12.

(5) An order entering prayer for judgment continued in a case involving an alleged violation of a law regulating the operation of a vehicle.

The child support enforcement agency shall send the Division a record of any court order revoking drivers license pursuant to G.S. 110-142.2(a)(1).

With the approval of the Commissioner, the clerk of court or the child support enforcement agency may forward a record of conviction, court order revoking drivers license, or prayer for judgment continued to the Division by electronic data processing means.

(b1) In any case in which the Division, for any reason, does not receive a record of a conviction or a prayer for judgment continued until more than one year after the date it is entered, the Division may, in its discretion, substitute a period of probation for all or any part of a revocation or disqualification required because of the conviction or prayer for judgment continued.

(c) Repealed by Session Laws 1991, c. 726, s. 10.

(d) Scope. — This Article governs drivers license revocation and disqualification. A drivers license may not be revoked and a person may not be disqualified except in accordance with this Article.

(e) Special Information. — A judgment for a conviction for an offense for which special information is required under this subsection shall, when appropriate, include a finding of the special information. The convictions for which special information is required and the specific information required is as follows:

(1) Homicide. — If a conviction of homicide involves impaired driving, the judgment must indicate that fact.

(2) G.S. 20-138.1, Driving While Impaired. — If a conviction under G.S. 20-138.1 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-138.1 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.

(3) G.S. 20-138.2, Driving Commercial Motor Vehicle While Impaired. — If the commercial motor vehicle involved in an offense under G.S. 20-138.2 was transporting a hazardous material required to be placarded, a judgment for that offense must indicate that fact.

(4) G.S. 20-166, Hit and Run. — If a conviction under G.S. 20-166 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-166 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.

(5) Felony Using Commercial Motor Vehicle. — If a conviction of a felony in which a commercial motor vehicle was used involves the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance, the judgment must indicate that fact. If a commercial motor vehicle used in a felony was transporting a hazardous

substance required to be placarded, the judgment for that felony must indicate that fact. (1935, c. 52, s. 18; 1949, c. 373, ss. 3, 4; 1955, c. 1187, s. 14; 1959, c. 47; 1965, c. 38; 1973, c. 19; 1975, cc. 46, 445; c. 716, s. 5; c. 871, s. 1; 1979, c. 667, s. 41; 1981, c. 416; c. 839; 1983, c. 294, s. 5; c. 435, s. 19; 1985, c. 764, s. 18; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 581, s. 1; c. 658, s. 2; 1989, c. 771, s. 10; 1991, c. 726, s. 10; 1993, c. 533, s. 7; 1995, c. 538, s. 2(c).)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to child support owed on or after that date, rewrote the catchline, which formerly read "When court to forward license to Division and report convictions and prayers for judgment continued"; and rewrote subsections (a) and (b).

§ 20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

(a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and he:

(1) failed to appear, after being notified to do so, when the case was called for a trial or hearing; or
(2) failed to pay a fine, penalty, or court costs ordered by the court.

Revocation orders entered under the authority of this section are effective on the sixtieth day after the order is mailed or personally delivered to the person.

(b) A license revoked under this section remains revoked until the person whose license has been revoked:

(1) disposes of the charge in the trial division in which he failed to appear when the case was last called for trial or hearing; or
(2) demonstrates to the court that he is not the person charged with the offense; or
(3) pays the penalty, fine, or costs ordered by the court; or
(4) demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted.

Upon receipt of notice from the court that the person has satisfied the conditions of this subsection applicable to his case, the Division must restore the person's license as provided in subsection (c). In addition, if the person whose license is revoked is not a resident of this State, the Division may notify the driver licensing agency in the person's state of residence that the person's license to drive in this State has been revoked.

(b1) A defendant must be afforded an opportunity for a trial or a hearing within a reasonable time of the defendant's appearance. Upon motion of a defendant, the court must order that a hearing or a trial be heard within a reasonable time.

(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order and any entries on his driving record relating to it shall be deleted and the person does not have to pay the restoration fee set by G.S. 20-7(i1). For all other revocation orders issued pursuant to this section, G.S. 50-13.12 or G.S. 110-142.2, the person must pay the restoration fee and satisfy any other applicable requirements of this Article before the person may be relicensed.

(d) To facilitate the prompt return of licenses and to prevent unjustified charges of driving while license revoked, the clerk of court, upon request, must give the person a copy of the notice it sends to the Division to indicate that the person has complied with the conditions of subsection (b) applicable to his case. If the person complies with the condition before the effective date of the revocation, the notice must indicate that the person is eligible to drive if he is otherwise validly licensed.

(e) As used in this section and in G.S. 20-24.2, the word offense includes crimes and infractions created by this Chapter. (1985, c. 764, s. 19; 1985 (Reg. Sess., 1986), c. 852, ss. 4-6, 9, 17; 1987, c. 581, s. 4; 1991, c. 682, s. 4; 1993, c. 313, s. 1; 1995, c. 538, s. 2(d).)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to child support owed on or after that date, inserted "G.S. 50-13.12 or G.S. 110-142.2" and substituted "the person" for "he" in the last sentence in subsection (c).

CASE NOTES

Cited in White v. Williams, 111 N.C. App. 879, 433 S.E.2d 808 (1993).

§ 20-24.2. Court to report failure to appear or pay fine, penalty or costs.

CASE NOTES

Cited in White v. Williams, 111 N.C. App. 879, 433 S.E.2d 808 (1993).

§ 20-26. Records; copies furnished; charge.

(a) The Division shall keep a record of all applications for a drivers license, all tests given an applicant for a drivers license, all applications for a drivers license that are denied, all drivers licenses issued, renewed, cancelled, or revoked, all disqualifications, all convictions affecting a drivers license, and all prayers for judgment continued that may lead to a license revocation. When the Division cancels or revokes a commercial drivers license or disqualifies a person, the Division shall update its records to reflect that action within 10 days after the cancellation, revocation, or disqualification becomes effective. When a person who is not a resident of this State is convicted of an offense or commits an act requiring revocation of the person's commercial drivers license or disqualification of the person, the Division shall notify the licensing authority of the person's state of residence.

The Division shall keep records of convictions occurring outside North Carolina for the offenses of exceeding a stated speed limit of 55 miles per hour or more by more than 15 miles per hour, driving while license suspended or revoked, careless and reckless driving, engaging in prearranged speed competition, engaging willfully in speed competition, hit-and-run driving resulting in damage to property, unlawfully passing a stopped school bus, illegal transportation of alcoholic beverages, and the offenses included in G.S. 20-17. The Division shall also keep records of convictions occurring outside North Carolina for any serious traffic violation that involves a commercial motor vehicle and is not otherwise required to be kept under this subsection.

(b) The Division shall furnish certified copies of license records required to be kept by subsection (a) of this section to State, county, municipal and court officials of this State for official use only, without charge. A certified copy of a driver's records kept pursuant to subsection (a) may be sent by the Police Information Network. In addition to the uses authorized by G.S. 8-35.1, a copy certified under the authority of this section is admissible as prima facie evidence of the status of the person's license. The Attorney General and the Commissioner of Motor Vehicles are authorized to promulgate such rules and regulations as may be necessary to implement the provision of this subsection.

(b1) The registered or declared weight set forth on the vehicle registration card or a certified copy of the Division record sent by the Division of Criminal Information or otherwise is admissible in any judicial or administrative proceeding and shall be prima facie evidence of the registered or declared weight.

(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section in accordance with G.S. 20-43.1 to other persons for uses other than official upon prepayment of the following fees:

(1) Limited extract copy of license record, for period up to three years	$5.00
(2) Complete extract copy of license record	5.00
(3) Certified true copy of complete license record	7.00.

All fees received by the Division under this subsection shall be credited to the Highway Fund.

(d) The charge for records provided pursuant to this section shall not be subject to the provisions of Chapter 132 of the General Statutes.

(e) In the event of a mistake on the part of any person in ordering license records under subsection (c) of this section, the Commissioner may refund or credit to that person up to sixty-five percent (65%) of the amount paid for the license records.

(f) On and after July 1, 1988, the Division shall expeditiously furnish to insurance agents, insurance companies, and to insurance support organizations as defined in G.S. 58-39-15(12), for the purpose of rating nonfleet private passenger motor vehicle insurance policies, through electronic data processing means or otherwise, copies of or information pertaining to license records that are required to be kept pursuant to subsection (a) of this section. (1935, c. 52, s. 20; 1961, c. 307; 1969, c. 783, s. 3; 1971, c. 486, s. 1; 1975, c. 716, s. 5; 1979, c. 667, s. 23; c. 903, ss. 9, 10; 1981, c. 145, s. 1; c. 412, s. 4; c. 690, s. 13; c. 747, s. 66; 1983, c. 435, s. 20; c. 761, s. 149; 1987, c. 869, s. 16; 1987 (Reg. Sess., 1988), c. 1112, s. 14; 1989, c. 771, ss. 9, 17; 1991, c. 689, s. 330; c. 726, s. 11; 1997-443, s. 32.25(b).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "in accordance with G.S. 20-43.1" in subsection (c).

§ 20-27. Availability of records.

(a) All records of the Division pertaining to application and to drivers' licenses, except the confidential medical report referred to in G.S. 20-7, of the current or previous five years shall be open to public inspection in accordance with G.S. 20-43.1, at any reasonable time during office hours and copies shall be provided pursuant to the provisions of G.S. 20-26.

(b) All records of the Division pertaining to chemical tests as provided in G.S. 20-16.2 shall be available to the courts as provided in G.S. 20-26(b). (1935, c. 52, s. 21; 1975, c. 716, s. 5; 1979, c. 667, s. 24; c. 903, s. 11; 1981, c. 145, s. 2; 1997-443, s. 32.25(c).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "in accordance with G.S. 20-43.1" in subsection (a).

§ 20-28. Unlawful to drive while license revoked or while disqualified.

(a) Driving While License Revoked. — Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. — A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2)a. The offense occurred more than 30 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 30 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 10 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3, effective October 1, 1994.

(c) When Person May Apply for License. — A person whose license has been revoked under this section for one year may apply for a license after 90 days. A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years. Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period. The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(d) Driving While Disqualified. — A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified. (1935, c. 52, s. 22; 1945, c. 635; 1947, c. 1067, s. 16; 1955, c. 1020, s. 1; c. 1152, s. 18; c. 1187, s. 20; 1957, c. 1046; 1959, c. 515; 1967, c. 447; 1973, c. 47, s. 2; cc. 71, 1132; 1975, c. 716, s. 5; 1979, c 377, ss. 1, 2; c. 667, s. 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 51; 1983 (Reg. Sess., 1984), c. 1101, s. 18A; 1989, c. 771, s. 4; 1991, c. 509, s. 2; c. 726, s. 12; 1993, c. 539, ss. 320-322; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, ss. 2, 3; 1995, c. 538, s. 2(e), (f).)

Editor's Note. — Session Laws 1993, c. 539, ss. 320, 322, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Session Laws 1993 (Reg. Sess., 1994), c. 761, ss. 2 and 3, which amended this section, was effective the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to child support owed on or after that date, in subsection (a) added "Except as provided in subsection (a1) of this section" to the beginning, and substituted "driving without a license" for "operating without a drivers license" at the end; and in subsection (a1) rewrote the introductory language, substituted "the person's" for "his" in subdivision (a1)(1), added subdivision (a1)(3) and made a related change.

§ 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.

CASE NOTES

Revocation of Driving Privilege. — When a person's driver's license is suspended or revoked, it is the surrendering of the privilege to drive, not the license card itself, that is of significance. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

Where petitioner, who was driving without his license, was stopped and charged with driving while impaired, and then appeared before a magistrate who revoked his driver's license for 10 days, petitioner's license had been validly revoked when he was stopped the next day; thus, he was properly charged with committing a moving violation during a period of revocation by operating a motor vehicle. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.

(a) Meaning of "Impaired Driving License Revocation". — The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9), if the offense involves impaired driving.

(a1) [Definitions.] — As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, and 20-28.6, the following terms mean:

(1) Acknowledgment. — A written document acknowledging that:

a. The vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;

b. If the vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving impaired driving, the vehicle is subject to impoundment and forfeiture; and

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the vehicle owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(2) Innocent Party. — A vehicle owner who:

a. Did not know and had no reason to know that the defendant's drivers license was revoked; or

b. Knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission.

(3) Lienholder. — A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(4) Order of Forfeiture. — An order by the court which terminates the rights and ownership interest of a vehicle owner in a motor vehicle in accordance with G.S. 20-28.2.

(5) Possessory Lien. — A lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to this lien shall not exceed five dollars ($5.00) per day.

(6) Registered Owner. — A person in whose name a registration card for a motor vehicle is issued.

(7) Vehicle Owner. — A person in whose name a registration card or certificate of title for a motor vehicle is issued.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. — If at a sentencing hearing conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of impaired driving becomes property subject to forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. — In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor shall determine the identity of every vehicle owner. The prosecutor shall also determine if there are any lienholders noted on the vehicle's certificate of title. The State shall notify the defendant, each vehicle owner, and each lienholder that the vehicle may be subject to forfeiture and that the defendant, vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least fourteen days before the hearing at which an order of forfeiture may be entered.

(d) Duty of Judge. — The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section. If at the sentencing hearing, or at a subsequent hearing, the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was the only vehicle owner at the time of the offense, the judge shall order the vehicle forfeited. If at the sentencing hearing or at a subsequent hearing, the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was not the only vehicle owner at the time of the offense, the judge shall order the vehicle forfeited unless another vehicle owner establishes, by the greater weight of the evidence, that such vehicle owner is an innocent party as defined by subdivision (a1)(2) of this section, in which case the trial judge shall order the vehicle released to the innocent party vehicle owner pursuant to the provisions of subsection (e) of this section. In any case where the vehicle is ordered forfeited, the judge shall either:

(1) Authorize the school board to sell the vehicle at public sale or retain the vehicle for its own use pursuant to G.S. 20-28.5; or

(2) Release the vehicle to an intervening lienholder pursuant to the provisions of subsection (g) of this section.

If the judge determines that the requirements of subsection (a) and (b) of this section exist but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) Return of Vehicle to Innocent Vehicle Owner. — If a nondefendant vehicle owner establishes by the greater weight of the evidence that: (i) the vehicle was being driven by a person who was not the only vehicle owner at the time of the underlying offense and (ii) that vehicle owner requesting release is an "innocent party', a judge shall order the vehicle returned to the owner.

This release shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter;

(3) The payment of towing and storage fees; and

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

No vehicle subject to forfeiture under this section shall be released to a vehicle owner if the records of the Division indicate the vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the vehicle while that person's license was revoked unless the innocent vehicle owner shows by the greater weight of the evidence that the vehicle owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(f) Release to Lienholder. — The trial judge shall order a forfeited vehicle released to the lienholder if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest is equal to or greater than the fair market value of the vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited vehicle to the vehicle owner who owned the vehicle immediately prior to forfeiture, or any person acting on the vehicle owner's behalf;

(3) The forfeited vehicle had not previously been released to the lienholder; and

(4) The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.

(g) Possessory Lien. — The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5). (1983, c. 435, s. 21; 1983 (Reg. Sess., 1984), c. 1101, s. 19; 1989 (Reg. Sess., 1990), c. 1024, s. 6; 1997-379, s. 1.1; 1997-456, s. 30.)

Editor's Note. — Session Laws 1997-379, s. 7, provides: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Effect of Amendments. — Session Laws 1997-379, s. 1.1, effective December 1, 1997, and applicable to offenses committed on or after that date, substituted "20-17(a)(2)" for "20-17(2)" in subdivision (a)(1); added subsection (a1); rewrote subsections (c), (d), (e), and (f), and added subsection (g).

Session Laws 1997-456, s. 30, effective August 29, 1997, inserted "20-17(a)(12)" in subdivision (a)(1), and substituted "20-17(a)(1), or 20-17(a)(9)" for "20-17(1), or 20-17(9)" in subdivision (a)(2).

§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving impaired driving while license revoked.

(a) [Vehicles Subject to Seizure.] — A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

(b) Duty of Officer. — If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the vehicle and have it impounded. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The officer shall cause to be issued written notification of impoundment to any vehicle owner who was not operating or present in the vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division records. This written notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for the impoundment and the procedure for requesting release of the vehicle. The seizing officer shall notify the Division of the seizure in accordance with procedures established by the Division. Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be given to any lienholder of record with the Division.

(c) Review by Magistrate. — Upon seizing a vehicle, the seizing officer shall present to a magistrate within the county where the vehicle was seized an affidavit of impoundment setting forth the basis upon which the motor vehicle has been seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the vehicle held. The magistrate may request additional information and may hear from the operator if the operator is present.

(d) Custody of Vehicle. — The seized vehicle shall be towed to a location designated by the county school board for the county in which the operator of the vehicle is charged and placed under the constructive possession of the school board pending release or sale. Each county school board may elect to have seized vehicles stored on property owned or leased by the school board and charge no fee for storage. In the alternative, the county school board may contract with a commercial storage facility for the storage of seized vehicles, and a storage fee of not more than five dollars ($5.00) per day may be charged.

(e) Release of Vehicle Pending Trial. — A vehicle owner, or a lienholder of a vehicle, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the vehicle.

The clerk shall release the vehicle to a qualified vehicle owner or a lienholder under the following conditions:

(1) The vehicle has been stored for not less than 24 hours;
(2) All towing and storage charges have been paid;
(3) Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3, payable to the county school fund and conditioned on return of the vehicle, without any new or additional liens or encumbrances, on the day of trial of the operator;
(4) If a qualified vehicle owner, execution of an acknowledgment as described in G.S. 20-28.2(a1); and
(5) A check of the records of the Division indicates that the requesting vehicle owner has not previously executed an acknowledgment naming the operator of the seized vehicle.

(f) Duty of Trial Judge. — The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.

(g) Possessory Lien. — The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5). (1997-379, s. 1.2; 1997-456, s. 31.)

Editor's Note. — Session Laws 1997-379, s. 7, made this section effective December 1, 1997, and applicable to offenses committed on or after that date.

Session Laws 1997-379, s. 7, provides: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Effect of Amendments. — Session Laws 1997-456, s. 31, effective August 29, 1997, in subsection (a) substituted "driving license revocation as defined in G.S. 20-28.2(a)" for "drivers license revocation" at the end of the first sentence, and deleted the second sentence and subdivisions (a)(1) and (a)(2) regarding when revocation of a drivers license is an impaired drivers license revocation.

§ 20-28.4. Release of impounded vehicles by judge.

(a) Release to Innocent Vehicle Owner. — A vehicle owner who was not the operator of the vehicle at the time of the offense may petition the court for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).

(b) Acknowledgment Required. — The vehicle owner seeking release under this section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).

(c) Release to Lienholder. — A district court judge may order a forfeited vehicle released to a lienholder if the judge determines, by the greater weight of the evidence, that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).

(d) Release Upon Conclusion of Trial. — If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

(1) Is subsequently not convicted of either G.S. 20-138.1 or G.S. 20-138.5 due to dismissal or a finding of not guilty; or

(2) The judge at the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2),

the seized vehicle shall be returned to the vehicle owner.

If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released.

A determination which results in the return or release of the seized vehicle under this section authorizes the driver, vehicle owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees recovered pursuant to this subsection shall be paid by the county school board from forfeitures paid into the county school fund. (1997-379, s. 1.3.)

Editor's Note. — Session Laws 1997-379, s. 7, made this section effective December 1, 1997, and applicable to offenses committed on or after that date.

Session Laws 1997-379, s. 7, provides: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

§ 20-28.5. Forfeiture of impounded vehicle.

(a) Sale. — Unless a judge orders the vehicle returned to an innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be a judicial sale conducted in accordance with the provisions of Parts 1 and 2 of Article 29A of Chapter 1 of the General Statutes and shall be conducted by the county school board or a person acting on its behalf. In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale shall also be given by certified mail, return receipt requested, to all vehicle owners at the address shown by the Division's records and at any other address of the vehicle owner as may be found in the criminal file in which the forfeiture was ordered. Notice of sale shall also be by certified mail, return receipt requested, to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division.

(b) Proceeds of Sale. — Proceeds of any sale conducted under this section shall first be applied to satisfy towing and storage liens and the cost of sale. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the vehicle was ordered forfeited.

Vehicles sold pursuant to this section shall be transferred free and clear of any liens.

(c) Retention of Vehicle. — The county board may, at its option, retain any forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time of the initial seizure of the vehicle shall be satisfied by the school board relieving the vehicle owner of all liability for the obligation secured by the motor vehicle.

(d) [Counties with Multiple School Boards.] — If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share due each of the school boards in the same manner as fines and other forfeitures.

(e) Order of Forfeiture; Appeals. — An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals. (1997-379, s. 1.4.)

Editor's Note. — Session Laws 1997-379, s. 7, made this section effective December 1, 1997, and applicable to offenses committed on or after that date.

Session Laws 1997-379, s. 7, provides: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

§ 20-28.6. Forfeiture of right of registration.

(a) A person convicted of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 forfeits the right to register or have registered a motor vehicle in the person's name until the person's drivers license is restored. The trial judge at the sentencing hearing on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 shall order the defendant's rights of registration forfeited for the period the defendant's drivers license is revoked. The defendant shall be ordered to surrender the registration on all motor vehicles registered in the defendant's name to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register a motor vehicle in the defendant's name until the defendant's drivers license has been restored.

(b) A registered owner other than the operator of the vehicle that is seized pursuant to G.S. 20-28.3 who is not an innocent party pursuant to G.S. 20-28.2 forfeits the right to register or have registered in the person's name the motor vehicle seized, until the drivers license of the person whose driving violation resulted in the motor vehicle being seized is restored. The trial judge on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 shall order the registered owner's rights of registration for the seized motor vehicle forfeited for the period the defendant's drivers license is revoked after an opportunity for a hearing and a determination that the requirements of subsections (a) through (c) of G.S. 20-28.2 exist. The registered owner shall be ordered to surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register the motor vehicle seized in the registered owner's name until the defendant's drivers license has been restored. (1997-379, s. 1.5; 1997-379, s. 1.5; 1997-456, s. 34(a).)

Editor's Note. — Session Laws 1997-379, s. 7, made this section effective December 1, 1997, and applicable to offenses committed on or after that date.

Session Laws 1997-379, s. 7, provides: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Effect of Amendments. — Session Laws 1997-456, s. 34(a), effective August 29, 1997, inserted "while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3" in the second sentences of subsections (a) and (b).

§ 20-28.7. Responsibility of Division of Motor Vehicles.

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, 20-28.5, and 20-28.6. (1997-379, s. 1.6.)

Editor's Note. — Session Laws 1997-379, s. 7, made this section effective December 1, 1997, and applicable to offenses committed on or after that date.

Session Laws 1997-379, s. 7, provides: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

§ 20-29. Surrender of license.

Editor's Note. — Session Laws 1993, c. 539, s. 323, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

§ 20-30. Violations of license or learner's permit provisions.

Editor's Note. — Session Laws 1993, c. 539, s. 1247, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-31. Making false affidavits perjury.

Editor's Note. — Session Laws 1993, c. 539, s. 1249, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-34. Unlawful to permit violations of this Article.

CASE NOTES

Under this section, there is no distinction in meaning between the words "authorize" and "permit"; either action would constitute a violation of this section. Thompson v. Three Guys Furn. Co., 122 N.C. App. 340, 469 S.E.2d 583 (1996).

§ 20-34.1. Violations for wrongful issuance of a drivers license or a special identification card.

(a) An employee of the Division or of an agent of the Division who does any of the following commits a Class I felony:

(1) Charges or accepts any money or other thing of value, except the required fee, for the issuance of a drivers license or a special identification card.

(2) Knowing it is false, accepts false proof of identification submitted for a drivers license or a special identification card.

(3) Knowing it is false, enters false information concerning a drivers license or a special identification card in the records of the Division.

(b) Defenses Precluded. — The fact that the Division does not issue a license or a special identification card after an employee or an agent of the Division charges or accepts money or another thing of value for its issuance is not a defense to a criminal action under this section. It is not a defense to a criminal action under this section to show that the person who received or was intended to receive the license or special identification card was eligible for it.

(c) Dismissal. — An employee of the Division who violates this section shall be dismissed from employment and may not hold any public office or public employment in this State for five years after the violation. If a person who violates this section is an employee of the agent of the Division, the Division shall cancel the contract of the agent unless the agent dismisses that person. A person dismissed by an agent because of a violation of this section may not hold any public office or public employment in this State for five years after the violation. (1951, c. 211; 1975, c. 716, s. 5; 1979, c. 667, s. 41; 1993, c. 533, s. 8, c. 539, s. 1250; 1994, Ex. Sess., c. 14, s. 30.)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 30(a), effective October 1, 1994, repealed Session Laws 1993, c. 539, s. 1250, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), which would have amended this section effective October 1, 1994, as it read prior to amendment by Session Laws 1993, c. 533, s. 8, by substituting "Class I felony which may include" for former punishment provisions.

Session Laws 1994, Extra Session, c. 14, s. 30(b), which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses occurring on or after that date.

§ 20-35. Penalties for violating Article; defense to driving without a license.

(a) Penalty. — A violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 4, effective October 1, 1994.

(c) Defenses. — A person may not be convicted of failing to carry a regular drivers license if, when tried for that offense, the person produces in court a regular drivers license issued to the person that was valid when the person was charged with the offense. A person may not be convicted of driving a motor vehicle without a regular drivers license if, when tried for that offense, the person shows all the following:

(1) That, at the time of the offense, the person had an expired license.

(2) The person renewed the expired license within 30 days after it expired and now has a drivers license.

(3) The person could not have been charged with driving without a license if the person had the renewed license when charged with the offense. (1935, c. 52, s. 29; 1991, c. 726, s. 14; 1993, c. 539, s. 324; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 4.)

Editor's Note. — Session Laws 1993, c. 539, s. 324, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 4, which amended this section, was effective the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539.

CASE NOTES

Cited in State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

Article 2A.

Afflicted, Disabled or Handicapped Persons.

§ 20-37.6. Parking privileges for handicapped drivers and passengers.

(a) General Parking. — Any vehicle that is driven by or is transporting a person who is handicapped and that displays a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard may be parked for unlimited periods in parking zones restricted as to the length of time parking is permitted. This provision has no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Any qualifying vehicle may park in spaces designated as restricted to vehicles driven by or transporting the handicapped.

(b) Handicapped Car Owners; Distinguishing License Plates. — If the handicapped person is a registered owner of a vehicle, the owner may apply for and display a distinguishing license plate. This license plate shall be issued for the normal fee applicable to standard license plates. Any vehicle owner who qualifies for a distinguishing license plate may also receive one removable windshield placard.

(c) Handicapped Drivers and Passengers; Distinguishing Placards. — A handicapped person may apply for the issuance of a removable windshield placard or a temporary removable windshield placard. Upon request, one additional placard may be issued to applicants who do not have a distinguishing license plate. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped persons may also apply. These organizations may receive one removable windshield placard for each transporting vehicle. When the removable windshield or temporary removable windshield placard is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (b) shall apply. The removable windshield placard or the temporary removable windshield placard shall be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle using a parking space allowed for handicapped persons. When there is no inside rearview mirror, or when the placard cannot reasonably be hung from the rearview mirror by the handicapped person, the placard shall be displayed on the driver's side of the dashboard. A removable windshield placard placed on a motorized wheelchair or similar vehicle shall be displayed in a clearly visible location. The Division shall establish procedures for the issuance of the placards and may charge a fee sufficient to pay the actual cost of issuance, but in no event less than five dollars ($5.00) per placard.

(c1) Application and Renewal; Physician's Certification. — The initial application for a distinguishing license plate, removable windshield placard, or temporary removable windshield placard shall be accompanied by a certification of a licensed physician, ophthalmologist, or optometrist or of the Division of Services for the Blind that the applicant is handicapped. The application for a temporary removable windshield placard shall contain additional certification to include the period of time the certifying authority determines the applicant will have the disability. Distinguishing license plates shall be renewed annually, but subsequent applications shall not require a medical certification that the applicant is handicapped. Removable windshield placards shall be renewed every five years, and the renewal shall require a medical recertification that the person is handicapped. Temporary removable windshield placards shall expire no later than six months after issuance.

(c2) Existing Placards; Expiration; Exchange for New Placards.— All existing placards shall expire on January 1, 1992. No person shall be convicted of parking in violation of this Article by reason of an expired placard if the defendant produces in court, at the time of trial on the illegal parking charge, an expired placard and a renewed placard issued within 30 days of the expiration date of the expired placard and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. Existing placards issued on or after July 1, 1989, may be exchanged without charge for the new placards.

(c3) It shall be unlawful to sell a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard issued pursuant to this section. A violation of this subsection shall be a Class 2 misdemeanor and may be punished pursuant to G.S. 20-176(c) and (c1).

(d) Designation of Parking Spaces. — Designation of parking spaces for handicapped persons on streets and public vehicular areas shall comply with G.S. 136-30. A sign designating a parking space for handicapped persons shall state the maximum penalty for parking in the space in violation of the law.

(d1) Repealed by Session Laws 1991, c. 530, s. 4.

(e) Enforcement of Handicapped Parking Privileges. — It shall be unlawful:

(1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons when the vehicle does not display the distinguishing license plate, removable windshield placard, or temporary removable windshield placard as provided in this section, or a disabled veteran registration plate issued under G.S. 20-79.4;

(2) For any person not qualifying for the rights and privileges extended to handicapped persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate, removable windshield placard, or temporary removable windshield placard issued pursuant to the provisions of this section;

(3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;

(4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas.

(f) Penalties for Violation. —

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of at least fifty dollars ($50.00) but

not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that a nonconforming sign is being used it shall be prima facie evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where the nonconforming sign is located is responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including a company police officer commissioned by the Attorney General under Chapter 74E, may cause a vehicle parked in violation of this section to be towed. The officer is a legal possessor as provided in G.S. 20-161(d)(2). The officer shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from a space pursuant to this section, except where the motor vehicle is willfully, maliciously, or negligently damaged in the removal from the space to a place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies. (1971, c. 374, s. 1; 1973, cc. 126, 1384; 1977, c. 340, s. 2; 1979, c. 632; 1981, c. 682, s. 7; 1983, c. 326, ss. 1, 2; 1985, c. 249; c. 586; c. 764, s. 24; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 843; 1989, c. 760, s. 3; 1989 (Reg. Sess., 1990), c. 1052, ss. 1-3.1; 1991, c. 411, s. 2; c. 530, s. 4; c. 672, s. 5; c. 726, s. 23; c. 761, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 30; c. 1043, s. 4; 1993, c. 373, s. 1; 1994, Ex. Sess., c. 14, s. 31.)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 31, which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses occurring on or after that date.

ARTICLE 2B.

Special Identification Cards for Nonoperators.

§ 20-37.7. Special identification card.

(a) Eligibility. — A person who is a resident of this State is eligible for a special identification card.

(b) Application. — To obtain a special identification card from the Division, a person must complete the application form used to obtain a drivers license.

(c) Format. — A special identification card shall be similar in size, shape, and design to a drivers license, but shall clearly state that it does not entitle the person to whom it is issued to operate a motor vehicle. A special identification card issued to an applicant must have the same background color that a drivers license issued to the applicant would have.

(d) Expiration and Fee. — A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who is legally blind, is at least 70 years old, or is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.

(e) Offense. — Any fraud or misrepresentation in the application for or use of a special identification card issued under this section is a Class 2 misdemeanor.

(f) Records. — The Division shall maintain a record of all recipients of a special identification card.

(g) No State Liability. — The fact of issuance of a special identification card pursuant to this section shall not place upon the State of North Carolina or any agency thereof any liability for the misuse thereof and the acceptance thereof as valid identification is a matter left entirely to the discretion of any person to whom such card is presented.

(h) Advertising. — The Division may utilize the various communications media throughout the State to inform North Carolina residents of the provisions of this section. (1973, c. 438, s. 1; 1975, c. 716, s. 5; 1979, c. 469, c. 667, s. 30; 1981, c. 673, ss. 1, 2; c. 690, s. 12; 1981 (Reg. Sess., 1982), c. 1257, s. 3; 1983, c. 443, s. 2; 1983 (Reg. Sess., 1984), c. 1062, s. 7; 1985, c. 141, s. 5; 1991, c. 689, s. 328; 1993, c. 368, s. 3; c. 490, ss. 1, 2; c. 539, s. 325; c. 553, s. 77; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 750, s. 2.)

Editor's Note. —
Session Laws 1993, c. 539, s. 325, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-37.8. Fraudulent use prohibited.

Editor's Note. — Session Laws 1993, c. 539, s. 326, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-37.9. Notice of change of address or name.

(a) Address. — A person whose address changes from the address stated on a special identification card must notify the Division of the change within 60 days after the change occurs. If the person's address changed because the person moved, the person must obtain a new special identification card within that time limit stating the new address. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.

(b) Name. — A person whose name changes from the name stated on a special identification card must notify the Division of the change within 60 days after the change occurs and obtain a new special identification card stating the new name.

(c) Fee. — G.S. 20-37.7 sets the fee for a special identification card. (1981, c. 521, s. 2; 1991, c. 689, s. 329; 1997-122, s. 6.)

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, rewrote the section.

ARTICLE 2C.

Commercial Driver License.

§ 20-37.12. Commercial drivers license required.

(a) On or after April 1, 1992, no person shall operate a commercial motor vehicle on the highways of this State unless he has first been issued and is in immediate possession of a commercial drivers license with applicable endorsements valid for the vehicle he is driving; provided, a person may operate a commercial motor vehicle after being issued and while in possession of a commercial driver learner's permit and while accompanied by the holder of a commercial drivers license valid for the vehicle being driven.

(b) The out-of-service criteria in 49 C.F.R. §§ 392.5 and 395.13, as adopted by the Division, apply to a person who drives a commercial motor vehicle. No person shall drive a commercial motor vehicle on the highways of this State in violation of an out-of-service order.

(c) Repealed by Session Laws 1991, c. 726, s. 15, effective October 1, 1991.

(d) Any person who is not a resident of this State, who has been issued a commercial drivers license by his state of residence, who has that license in his immediate possession, whose privilege to drive any motor vehicle is not suspended, revoked, or cancelled, and who has not been disqualified from driving a commercial motor vehicle shall be permitted without further examination or licensure by the Division to drive a commercial motor vehicle in this State.

(e) G.S. 20-7 sets the time period in which a new resident of North Carolina must obtain a license from the Division. The Commissioner may establish by rule the conditions under which the test requirements for a commercial drivers license may be waived for a new resident who is licensed in another state. (1989, c. 771, s. 2; 1991, c. 726, s. 15; 1997-122, s. 5.)

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, substituted "G.S. 20-7 sets the time period in which a new resident of North Carolina must obtain" for "In accordance with G.S. 20-7, a new resident of North Carolina has 30 days to obtain" in the first sentence of subsection (e).

§ 20-37.15. Application for commercial drivers license.

(a) An application for a commercial drivers license must include the information required by G.S. 20-7 for a regular drivers license and a consent to release driving record information.

(a1) The application must be accompanied by a nonrefundable application fee of twenty dollars ($20.00). This fee does not apply in any of the following circumstances:

(1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.

(2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c).

(b) When the holder of a commercial drivers license changes his name or residence address, an application for a duplicate shall be made as provided in G.S. 20-7.1 and a fee paid as provided in G.S. 20-14. (1989, c. 771, s. 2; 1991, c. 726, s. 17; 1993 (Reg. Sess., 1994), c. 750, s. 3.)

§ 20-37.16. Content of license; classifications and endorsements; fees.

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL — A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL — A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL — A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. — The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles carrying hazardous materials, other than tank vehicles
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
T	Double trailers
X	Tank vehicles carrying hazardous materials.

To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to a person whose license is restricted to driving a school bus or school activity bus or to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:

a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.

b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.

c. Is not used in the operations of a for-hire motor carrier.

d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation. (1989, c. 771, s. 2; 1991, c. 726, s. 18; 1993, c. 368, s. 4; 1993 (Reg. Sess., 1994), c. 750, ss. 4, 6; 1995 (Reg. Sess., 1996), c. 695, s. 1; c. 756, s. 5.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 695, s. 1, effective June 21, 1996, in subsection (c), deleted the entry for endorsement "L", which read "Double trailers that are longer combination vehicles", and deleted "other than longer combination vehicles" following "Double trailers" in the entry for endorsement "T".

Session Laws 1995 (Reg. Sess., 1996), c. 756, s. 5, effective June 21, 1996, deleted "and" from the end of subdivision (e)(2); substituted "A farm vehicle that meets" for "Farm vehicles that meet" in subdivision (e)(3); added "Is" to the beginning of subdivisions (e)(3)a., (e)(3)b., (e)(3)c., and (e)(3)d.; substituted "for-hire motor carrier" for "common or contract motor carrier; and" in subdivision (e)(3)c.; and made punctuation changes.

§ 20-37.21. Penalties.

Editor's Note. — Session Laws 1993, c. 539, s. 327, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 3.

Motor Vehicle Act of 1937.

Part 2. Authority and Duties of Commissioner and Division.

§ 20-39. Administering and enforcing laws; rules and regulations; agents, etc.; seal; fees; licenses and plates for undercover officers.

(a) The Commissioner is hereby vested with the power and is charged with the duty of administering and enforcing the provisions of this Article and of all laws regulating the operation of vehicles or the use of the highways, the enforcement or administration of which is now or hereafter vested in the Division.

(b) The Commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this Article and any other laws the enforcement and administration of which are vested in the Division.

(c) The Commissioner is authorized to designate and appoint such agents, field deputies, and clerks as may be necessary to carry out the provisions of this Article.

(d) The Commissioner shall adopt an official seal for the use of the Division.

(e) The Commissioner is authorized to cooperate with and provide assistance to the Environmental Management Commission, or appropriate local government officials, and to develop, adopt, and ensure enforcement of necessary rules and regulations, regarding programs of motor vehicle emissions inspection/maintenance required for areas in which ambient air pollutant concentrations exceed National Ambient Air Quality Standards.

(f) The Commissioner is authorized to charge and collect the following fees for the verification of equipment to be used on motor vehicles or to be sold in North Carolina, when that approval is required pursuant to this Chapter:

(1) When a federal standard has been established, the fee shall be equal to the cost of verifying compliance with the applicable federal standard; or

(2) When no federal standard has been established, the fee shall be equal to the cost of verifying compliance with the applicable State standard. Any motor vehicle manufacturer or distributor who is required to certify his products under the National Traffic and Motor Vehicle Safety Act of 1966, as from time to time amended, may satisfy the provisions of this section by submitting an annual written certification to the Commissioner attesting to the compliance of his vehicles with applicable federal requirements. Failure to comply with the certification requirement or failure to meet the federal standards will subject the manufacturer or distributor to the fee requirements of this subsection.

(g) The Commissioner, notwithstanding any other provision of this Chapter, may lawfully to the extent necessary provide law-enforcement officers of the Division on special undercover assignments with motor vehicle operator's licenses and motor vehicle registration plates under assumed names using false or fictitious addresses. The Commissioner shall be responsible for the request for issuance and use thereof. The Commissioner may direct the immediate return of any operator's license or registration plate issued pursuant to this section.

(h) The Commissioner, notwithstanding any other provision of this Chapter, may lawfully and to the extent necessary, provide local, State or federal law-enforcement officers on special undercover assignments with motor vehicle drivers licenses and motor vehicle registration plates under assumed names using false or fictitious addresses. Such registration plates shall only be used on publicly owned or leased vehicles. Requests for these licenses and registration plates shall be made to the Commissioner by the head of the local, State or federal law-enforcement agency and be accompanied by approval in writing from the Director of the State Bureau of Investigation upon a specific finding by the Director that the request is justified and necessary. The Director shall keep a record of all such licenses, registration plates, assumed names, false or fictitious addresses, and law-enforcement officers using the licenses or registration plates, and shall request the immediate return of any license or registration plate that is no longer necessary. Licenses and registration plates provided under this subsection shall expire six months after initial issuance or subsequent validation after the request for extension has been approved in writing by the Director of the State Bureau of Investigation. The head of the local, State or federal law-enforcement agency shall be responsible for the use of the licenses and registration plates and shall return them immediately to the Commissioner for cancellation upon either (i) their expiration, (ii) request of the Director of the State Bureau of Investigation, or (iii) request of the Commissioner. Failure to return a license or registration plates issued pursuant to this subsection shall be punished as a Class 2 misdemeanor. At no time shall the number of valid licenses and registration plates issued under this act exceed one hundred, and those issued shall be strictly monitored by the Director. All of the private registration plates issued to special agents of the State Bureau of Investigation under the Department of Justice and to alcohol law enforcement agents under the Department of Crime Control and Public Safety, pursuant to G.S. 14-250, may be fictitious plates and shall not be counted in the total number of fictitious plates authorized by this subsection.

(i) Notwithstanding the requirements of G.S. 20-7.1 and G.S. 20-67(a), the Commissioner may correct the address records of drivers license and registration plate holders as shown in the files of the Division to that shown on notices and renewal cards returned to the Division with new addresses provided by the United States Postal Service. (1937, c. 407, s. 4; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 1; 1983, c. 223; c. 629, s. 2; c. 768, ss. 25.1, 25.2; 1985, c. 767, ss. 1, 2; 1987, c. 552; 1991, c. 53, s. 1; c. 654, s. 1; 1993, c. 539, s. 328; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 6.2(b); 1996, 2nd Ex. Sess., c. 18, s. 23(a); 1997-256, s. 8; 1997-347, s. 4; 1997-401, s. 4; 1997-418, s. 3; 1997-443, s. 20.10(a), (b).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993, c. 539, s. 328, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 769, in s. 20 provides: "The Division of Motor Vehicles shall report quarterly, beginning in January 1995, to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division, on the Emission Inspection Program's compliance with regulations the Environmental Protection Agency adopted for the inspection and maintenance activities required in the Clean Air Amendments of 1990. The report shall include the receipts and expenditures from the Emissions Program Account."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 23(b), provides: "The Joint Legislative Commission on Governmental Operations shall study the statutory authorization of the use of private, confidential, and fictitious license plates on State-owned motor vehicles and the administration and enforcement of the applicable statutes. The Commission shall report the results of its study to the 1997 General Assembly."

Session Laws 1996, Second Extra Session, c. 18, s. 23(c), as amended by Session Laws 1997-256, s. 8, 1997-347, s. 4, 1997-401, s. 4, and 1997-418, s.3, provided that the amendment by Session Laws 1996, Second Extra Session, c. 18, s. 23(a) was to expire August 29, 1997. Session Laws 1996, Second Extra Session, c. 18, s. 23(c) was repealed by Session Laws 1997-443, s. 20.10(b), effective June 29, 1997.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: " Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "one hundred" for "fifty" preceding "and those issued shall be strictly monitored" in subsection (h).

Session Laws 1997-443, ss. 20.10(a) and (b), effective June 29, 1997, substituted "one hundred twenty-five" for "one hundred" in subsection (h), and repealed the expiration date of June 30, 1997, for the amendment to subsection (h) by Session Laws 1996, Second Extra Session, c. 18, s. 23.

§ 20-42. Authority to administer oaths and certify copies of records.

(a) Officers and employees of the Division designated by the Commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall charge for the acknowledgment of signatures a fee according to the following schedule:

(1) One signature	$2.00
(2) Two signatures	3.00
(3) Three or more signatures	4.00

Funds received under the provisions of this subsection shall be used to defray a part of the costs of distribution of license plates, registration certificates and certificates of title issued by the Division.

(b) The Commissioner and officers of the Division designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any document of the Division for a fee. The fee for a document, other than an accident report under G.S. 20-166.1, is five dollars ($5.00). The fee for an accident report is four dollars ($4.00). A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. The certification fee does not apply to a document furnished for official use to a judicial official or to an official of the federal government, a state government, or a local government. (1937, c. 407, s. 7; 1955, c. 480; 1961, c. 861, s. 1; 1967, c. 691, s. 41; c. 1172; 1971, c. 749; 1975, c. 716, s. 5; 1977, c. 785; 1979, c. 801, s. 7; 1981, c. 690, ss. 22, 23; 1991, c. 689, s. 331; 1995, c. 191, s. 8.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, in subsection (b) substituted "for a fee" for "charging a fee" at the end of the first sentence, rewrote the second sentence, added the third sentence, and in the last sentence deleted "to State officials or to county, municipal, or court officials of this State" following "furnished" and added the language beginning "to a judicial official" to the end of the sentence.

§ 20-43. Records of Division.

(a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours in accordance with G.S. 20-43.1. A photographic image or signature recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be released except for law enforcement purposes.

(b) The Commissioner, upon receipt of notification from another state or foreign country that a certificate of title issued by the Division has been surrendered by the owner in conformity with the laws of such other state or foreign country, may cancel and destroy such record of certificate of title. (1937, c. 407, s. 8; 1947, c. 219, s. 1; 1971, c. 1070, s. 1; 1975, c. 716, s. 5; 1995, c. 195, s. 1; 1997-443, s. 32.25(d).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "in accordance with G.S. 20-43.1" in subsection (a).

§ 20-43.1. Disclosure of personal information in motor vehicle records.

The Division shall disclose personal information contained in motor vehicle records in accordance with the federal Driver's Privacy Protection Act of 1994, as amended, 18 U.S.C. §§ 2721, et seq. As authorized in 18 U.S.C. § 2721, the Division shall not disclose personal information for the purposes specified in 18 U.S.C. § 2721(b)(11) or establish a waiver procedure described in 18 U.S.C. § 2721(d). The Division shall establish procedures to disclose personal information for the purposes and in the manner described in 18 U.S.C. § 2721(b)(12) for titles and applications for leased vehicles issued on and after July 1, 1998. (1997-443, s. 32.25(a).)

Editor's Note. — Session Laws 1997-443, s. 35.5, made this section effective July 1, 1997.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

§ 20-45. Seizure of documents and plates.

Editor's Note. — Session Laws 1993, c. 539, s. 329, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-47. Division may summon witnesses and take testimony.

Editor's Note. — Session Laws 1993, c. 539, s. 330, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 3. Registration and Certificates of Titles of Motor Vehicles.

§ 20-50. Owner to secure registration and certificate of title; temporary registration markers.

(a) Except as otherwise provided in this Article, every owner of a vehicle intended to be operated upon any highway of this State and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article: Provided that the Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. It is further provided that when the owner of a vehicle leases such vehicle to a carrier of passengers or property and it is actually used by such carrier in the operation of its business, the registration plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. Provided further that when the owner of a vehicle leases such vehicle to a farmer and it is actually used by such farmer in the operation of his farm, the registration plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require.

(b) The Division may issue a temporary license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is three dollars ($3.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

(1) It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.

(2) It expires on midnight of the day set for expiration.

(3) It may be used only on the vehicle for which issued and may not be transferred, loaned, or assigned to another.

(4) If it is lost or stolen, the person who applied for it must notify the Division.

(5) It may not be issued by a dealer.

(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 that apply to license plates apply to temporary license plates insofar as possible. (1937, c. 407, s. 15; 1943, c. 648; 1945, c. 956, s. 3; 1947, c. 219, s. 2; 1953, c. 831, s. 3; 1957, c. 246, s. 2; 1961, c. 360, s. 1; 1963, c. 552, s. 1; 1973, c. 919; 1975, c. 462; c. 716, s. 5; c. 767, s. 1; 1995, c. 394, s. 1.)

CASE NOTES

Registration and Certificate of Title Not Required. — Where purchaser of real property did not need to transport permanently attached mobile home along the highways and had no intention of doing so, purchaser was not required to register the mobile home nor to obtain a certificate of title; the mobile home was permanently affixed to the land when the property was deeded to the debtors and all parties intended the transaction to be one involving the sale of real property. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

§ 20-50.4. Division to refuse to register vehicles on which taxes are delinquent and when there is a failure to meet court-ordered child support obligations.

(a) Delinquent Property Taxes. — Upon receiving the list of motor vehicle owners and motor vehicles sent by county tax collectors pursuant to G.S. 105-330.7, the Division shall refuse to register for the owner named in the list any vehicle identified in the list until either the vehicle owner presents the Division with a paid tax receipt identifying the vehicle for which registration was refused or the county certifies to the Division that the tax has been paid. The Division shall not refuse to register a vehicle for a person, not named in the list, to whom the vehicle has been transferred in good faith. Where a motor vehicle owner named in the list has transferred the registration plates from the motor vehicle identified in the list to another motor vehicle pursuant to G.S. 20-64 during the first vehicle's tax year, the Division shall refuse registration of the second vehicle until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle from which the plates were transferred or the county certifies to the Division that the tax has been paid. The certification must be in the form and contain the information required by the Division.

(b) Delinquent Child Support Obligations. — Upon receiving a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed, the Division shall refuse to register a vehicle for the owner named in the report until the Division receives certification pursuant to G.S. 110-142.2 that the payments are no longer considered delinquent. (1991, c. 624, s. 5; 1995, c. 538, s. 2(g); 1995 (Reg. Sess., 1996), c. 741, ss. 1, 2.)

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 741, s. 1, which was effective June 21, 1996, and was repealed effective December 1, 1996, in the first paragraph in the first sentence inserted "either" following "in the list until" and added "or the county certifies to the Division that the tax has been paid", added "or the county certifies to the Division that the tax has been paid" in the next-to-last sentence, and added the last sentence, which read

"The certification must be in the form and contain the information required by the Division".

Effect of Amendments. — The 1995 amendment, effective December 1, 1996, and applicable to child support owed on or after that date, added "and when there is a failure to meet court-ordered child support obligations" to the end of the catchline, and rewrote the first paragraph.

Session Laws 1995 (Reg. Sess., 1996), c. 741, s. 2, effective December 1, 1996, added the subsection (a) designation and subcatchline; in subsection (a), in the first paragraph, deleted "or a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed" following "G.S. 105-330.7", inserted "either" following "in the list until", and substituted "or the county certifies to the Division that the tax has been paid" for "or, if the owner was on the report furnished by a child support enforcement agency, the Division shall refuse to register a vehicle for the owner until such time as the Division receives certification pursuant to G.S. 110-142.2", made the former second paragraph part of subsection (a), added "or the county certifies to the Division that the tax has been paid" in the next-to-last sentence of subsection (a) and added the last sentence; and added subsection (b).

§ 20-51. Exempt from registration.

The following shall be exempt from the requirement of registration and certificate of title:

(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this Article relating to manufacturers, dealers, or nonresidents.

(2) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

(3) Any implement of husbandry, farm tractor, road construction or maintenance machinery or other vehicle which is not self-propelled that was designed for use in work off the highway and which is operated on the highway for the purpose of going to and from such nonhighway projects.

(4) Any vehicle owned and operated by the government of the United States.

(5) Farm tractors equipped with rubber tires and trailers or semitrailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor, implement of husbandry, and trailer or semitrailer while on any trip within a radius of 10 miles from the point of loading, provided that the vehicle does not exceed a speed of 35 miles per hour. This section shall not be construed as granting any exemption to farm tractors, implements of husbandry, and trailers or semitrailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors, implements of husbandry, and trailers or semitrailers.

(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, fertilizers or chemicals purchased or owned by such farmer or tenant for personal use in implementing

husbandry or irrigation pipes and equipment owned by such farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term "transporting" as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith.

(7) Those small farm trailers known generally as tobacco-handling trailers, tobacco trucks or tobacco trailers when used by a farmer, his tenant, agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof.

(8) Any vehicle which is driven or moved upon a highway only for the purpose of crossing or traveling upon such highway from one side to the other provided the owner or lessee of the vehicle owns the fee or a leasehold in all the land along both sides of the highway at the place or crossing.

(9) Mopeds as defined in G.S. 20-4.01(27)d1.

(10) Devices which are designed for towing private passenger motor vehicles or vehicles not exceeding 5,000 pounds gross weight. These devices are known generally as "tow dollies." A tow dolly is a two-wheeled device without motive power designed for towing disabled motor vehicles and is drawn by a motor vehicle in the same manner as a trailer.

(11) Devices generally called converter gear or dollies consisting of a tongue attached to either a single or tandem axle upon which is mounted a fifth wheel and which is used to convert a semitrailer to a full trailer for the purpose of being drawn behind a truck tractor and semitrailer.

(12) Motorized wheelchairs or similar vehicles not exceeding 1,000 pounds gross weight when used for pedestrian purposes by a handicapped person with a mobility impairment as defined in G.S. 20-37.5.

(13) Any vehicle registered in another state and operated temporarily within this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage. (1937, c. 407, s. 16; 1943, c. 500; 1949, c. 429; 1951, c. 705, s. 2; 1953, c. 826, ss. 2, 3; c. 1316, s. 1; 1961, cc. 334, 817; 1963, c. 145; 1965, c. 1146; 1971, c. 107; 1973, cc. 478, 757, 964; 1979, c. 574, s. 6; 1981 (Reg. Sess., 1982), c. 1286; 1983, cc. 288, 732; 1987, c. 608; 1989, c. 157, s. 2; 1991, c. 411, s. 4; 1995, c. 50, s. 4.)

§ 20-52. Application for registration and certificate of title.

(a) An owner of a vehicle subject to registration must apply to the Division for a certificate of title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application form provided by the Division. The application form must request all of the following information and may request other information the Division considers necessary:

(1) The owner's name.

(1a) If the owner is an individual, the following information:

a. The owner's mailing address and residence address.
b. The owner's social security number.

(1b) If the owner is a firm, a partnership, a corporation, or another entity, the address of the entity.

(2) A description of the vehicle, including the following:
a. The make, model, type of body, and vehicle identification number of the vehicle.
b. Whether the vehicle is new or used and, if a new vehicle, the date the manufacturer or dealer sold the vehicle to the owner and the date the manufacturer or dealer delivered the vehicle to the owner.

(3) A statement of the owner's title and of all liens upon the vehicle, including the names and addresses of all lienholders in the order of their priority, and the date and nature of each lien.

The application form must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the motor vehicle registration laws and may not disclose the social security number for any other purpose. The social security number of a person who applies to register a vehicle or of a person in whose name a vehicle is registered is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii).

(b) When such application refers to a new vehicle purchased from a manufacturer or dealer, such application shall be accompanied with a manufacturer's certificate of origin that is properly assigned to the applicant. If the new vehicle is acquired from a dealer or person located in another jurisdiction other than a manufacturer, the application shall be accompanied with such evidence of ownership as is required by the laws of that jurisdiction duly assigned by the disposer to the purchaser, or, if no such evidence of ownership be required by the laws of such other jurisdiction, a notarized bill of sale from the disposer. (1937, c. 407, s. 17; 1961, c. 835, ss. 2, 3; 1975, c. 716, s. 5; 1991, c. 183, s. 2; 1993 (Reg. Sess., 1994), c. 750, s. 5.)

§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.

Editor's Note. — Session Laws 1993, c. 539, s. 331, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-54. Authority for refusing registration or certificate of title.

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or

reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.

(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State.

(5) The required fee has not been paid.

(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid. (1937, c. 407, s. 19; 1975, c. 716, s. 5; 1993 (Reg. Sess., 1994), c. 754, s. 7.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1996, in subdivision (1) deleted "That" from the beginning, substituted "a false or fraudulent statement" for "any false or fraudulent statement that", substituted "Division, or" for "Division or that"; in subdivision (2) deleted "That" from the beginning; in subdivision (3) deleted "That" from the beginning, substituted "another person who has a valid lien against the vehicle" for "other person having valid lien upon such vehicle"; deleted "That" from the beginning of subdivisions (4) and (5); added subdivision (6), and made stylistic changes.

§ 20-58. Perfection by indication of security interest on certificate of title.

CASE NOTES

Recordation on Certificate of Title Required. — Security interests in vehicles requiring registration and certificates of title may be perfected only if recorded on the certificate of title. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

§ 20-59. Unlawful for lienor who holds certificate of title not to surrender same when lien satisfied.

Editor's Note. — Session Laws 1993, c. 539, s. 332, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-63. Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.

(a) The Division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer or semitrailer and for every other motor vehicle. Registration plates issued by the Division under this Article shall be and remain the property of the State, and it shall be lawful for the Commissioner or his duly authorized agents to summarily take possession of any plate or plates which he has reason to believe is being illegally used, and to keep in his possession such plate or plates pending investigation and legal disposition of the same. Whenever the Commissioner finds that any registration plate issued for any vehicle pursuant to the provisions of this Article has become illegible or is in such a condition that the numbers thereon may not be readily distinguished, he may require that such registration plate, and its companion when there are two registration plates, be surrendered to the Division. When said registration plate or plates are so surrendered to the Division, a new registration plate or plates shall be issued in lieu thereof without charge. The owner of any vehicle who receives notice to surrender illegible plate or plates on which the numbers are not readily distinguishable and who willfully refuses to surrender said plates to the Division shall be guilty of a Class 2 misdemeanor.

(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less.

A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right.

(c) Such registration plate and the required numerals thereon, except the year number for which issued, shall be of sufficient size to be plainly readable from a distance of 100 feet during daylight.

(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semitrailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof. Provided further, that when only one registration plate is issued for a motor vehicle and this motor vehicle is transporting a substance that may adhere to the plate so as to cover or discolor the plate or if the motor vehicle has a mechanical loading device that may damage the plate, the registration plate may be attached to the front of the motor vehicle.

Any motor vehicle of the age of 35 years or more from the date of manufacture may bear the license plates of the year of manufacture instead of the current registration plates, if the current registration plates are maintained within the vehicle and produced upon the request of any person.

(e) Preservation and Cleaning of Registration Plates. — It shall be the duty of each and every registered owner of a motor vehicle to keep the registration plates assigned to such motor vehicle reasonably clean and free from dust and dirt, and such registered owner, or any person in his employ, or who operates such motor vehicle by his authority, shall, upon the request of any proper officer, immediately clean such registration plates so that the numbers thereon may be readily distinguished, and any person who shall neglect or refuse to so clean a registration plate, after having been requested to do so, shall be guilty of a Class 3 misdemeanor.

(f) Operating with False Numbers. — Any person who shall willfully operate a motor vehicle with a registration plate which has been repainted or altered or forged shall be guilty of a Class 2 misdemeanor.

(g) Alteration, Disguise, or Concealment of Numbers. — Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor.

(h) Commission Contracts for Issuance of Plates and Certificates. — All registration plates, registration certificates and certificates of title issued by the Division, outside of those issued from the Raleigh offices of the said Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of such plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina and the Division shall make a reasonable effort in every locality, except as hereinbefore noted, to enter into a commission contract for the issuance of such plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts as hereinbefore set out it shall then issue said plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of such distribution. Commission contracts entered under this subsection shall provide for the payment of compensation for all transactions as set forth below. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated.

A transaction is any of the following activities:

(1) Issuance of a registration plate, a registration card, a registration renewal sticker, or a certificate of title.

(2) Issuance of a handicapped placard or handicapped identification card.

(3) Acceptance of an application for a personalized registration plate.

(4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.

(5) Cancellation of a title because the vehicle has been junked.

(6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.

(7) Receipt of the civil penalty imposed by G.S. 20-309 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.

(8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.

(9) Collection of the highway use tax.

Performance at the same time of any combination of the items that are listed within each subdivision or are listed within subdivisions (1) through (8) of this section is a single transaction for which a dollar and thirty-five cent ($1.35) compensation shall be paid. Performance of the item listed in subdivision (9) of this subsection in combination with any other items listed in this subsection is a separate transaction for which a one dollar and twenty cent ($1.20) compensation shall be paid. (1937, c. 407, s. 27; 1943, c. 726; 1951, c. 102, ss. 1-3; 1955, c. 119, s. 1; 1961, c. 360, s. 4; c. 861, s. 2; 1963, c. 552, s. 6; c. 1071; 1965, c. 1088; 1969, c. 1140; 1971, c. 945; 1973, c. 629; 1975, c. 716, s. 5; 1979, c. 470, s. 1; c. 604, s. 1; c. 917, s. 4; 1981, c. 750; c. 859, s. 76; 1983, c. 253, ss. 1-3; 1985, c. 257; 1991 (Reg. Sess., 1992), c. 1007, s. 32; 1993, c. 539, ss. 333-336; 1994, Ex. Sess., c. 24, s. 14(c); 1997-36, s. 1; 1997-443, s. 32.7(a); 1997-461, s. 1.)

Editor's Note. —

Session Laws 1993, c. 539, ss. 333-336, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1997-443, s. 32.7(b), provides that the Department of Transportation shall develop performance measures for commission agent contracts, entered into pursuant to subsection (h) of this section, as a basis for judging compliance with those contracts, and shall report on the measures to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division by December 1, 1997; no performance measures shall be implemented prior to that review.

Session Laws 1997-443, s. 32.29 provides: "(a) The Office of Productivity Management in the Administrative Division of the Department of Transportation shall study the transactions performed by tag agents pursuant to the Commission Contracts authorized by G.S. 20-63(h). The study shall:

"(1) Analyze and weigh the relative complexity and time required to complete the various transactions so that a scale can be established to provide reimbursement based on those factors.

"(2) To the extent possible, determine the costs of performing the transactions based on a review of the actual costs of operating a sample of tag agencies across the State.

"(3) To the extent possible, determine the impact on tag agents of any on-line registration program recommended as a result of the study required by subsection (b) of this section.

"The Department shall not recommend a particular reimbursement rate for each transaction.

"(b) The Division of Motor Vehicles shall study the feasibility of a system that would allow motor vehicle dealers to enter information onto the STARS system that would be necessary for the issuance of certificates of title, registration plates, or both, for new vehicles sold by them.

"The report issued by the Division as a result of this study shall include the advisability of a pilot program and any necessary legislation to implement the program, as appropriate.

"(c) The results of the studies mandated by this section shall be reported to the Joint Legislative Transportation Oversight Committee by March 1, 1998."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-36, s.1, effective January 1, 1998 and applicable to new or renewal registrations occurring on or after that date, in the first paragraph of subsection (b) inserted "or" following "trailer", substituted "6,000 pounds or less" for "less than 5,000", deleted "a property hauling vehicle, or a commercial vehicle bearing a personalized plate" following "pounds or less"; in the last paragraph substituted "6,000" for "4,000", and inserted "or less" following "pounds".

Session Laws 1997-443, s. 32.7(a), effective July 1, 1997, in subsection (h), in the first paragraph deleted "at a rate of sixty cents (60¢) per transaction" preceding "for all transactions", inserted "as set forth below", and added the second and third paragraphs.

Session Laws 1997-461, s. 1, effective January 1, 1998, and applicable to registration plates issued for periods beginning on or after that date, rewrote the first paragraph of subsection (b).

§ 20-64.1: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 6, effective June 21, 1996.

§ 20-66. Renewal of vehicle registration.

(a) Annual Renewal. — The registration of a vehicle must be renewed annually. To renew the registration of a vehicle, the owner of the vehicle must file an application with the Division and pay the required registration fee. The Division may receive and grant an application for renewal of registration at any time before the registration expires.

(b) Method of Renewal. — When the Division renews the registration of a vehicle, it must issue a new registration card for the vehicle and either a new registration plate or a registration renewal sticker. The Division may renew a registration plate for any type of vehicle by means of a renewal sticker.

(b1) Repealed by Session Laws 1993, c. 467, s. 2.

(c) Renewal Stickers. — A registration renewal sticker issued by the Division must be displayed on the registration plate that it renews in the place prescribed by the Commissioner and must indicate the period for which it and the registration plate on which it is displayed are valid. Except where physical differences between a registration renewal sticker and a registration plate render a provision of this Chapter inapplicable, the provisions of this Chapter relating to registration plates apply to registration renewal stickers.

(d), (e) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, § 5, effective July 16, 1994.

(f) Repealed by Session Laws 1993, c. 467, s. 2.

(g) When Renewal Sticker Expires. — The registration of a vehicle that is renewed by means of a registration renewal sticker expires at midnight on the last day of the month designated on the sticker. It is lawful, however, to operate the vehicle on a highway until midnight on the fifteenth day of the month following the month in which the sticker expired if the vehicle is not registered under the International Registration Plan. If the vehicle is registered under the International Registration Plan, it is not lawful to operate the vehicle on a highway after the sticker expires.

The Division may vary the expiration dates of registration renewal stickers issued for a type of vehicle so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. When the Division implements registration renewal for a type of vehicle by means of a renewal sticker, it may issue a registration renewal sticker that expires at the end of any monthly interval beginning at nine months and ending at eighteen months.

(h) When Calendar-Year Plate Expires. — The registration of a vehicle that is not renewed by means of a registration renewal sticker expires at midnight on December 31 of each year. It is lawful, however, to operate the vehicle on a highway until midnight on the following February 15.

(i) Property Tax Consolidation. — When the Division receives an application under subsection (a) for the renewal of registration before the current registration expires, the Division shall grant the application if it is made for the purpose of consolidating the property taxes payable by the applicant on classified motor vehicles, as defined in G.S. 105-330. The registration fee for a motor vehicle whose registration cycle is changed under this subsection shall be reduced by a prorated amount. The prorated amount is one-twelfth of the registration fee in effect when the motor vehicle's registration was last renewed multiplied by the number of full months remaining in the motor vehicle's current registration cycle, rounded to the nearest multiple of twenty-five cents (25¢). (1937, c. 407, s. 30; 1955, c. 554, s. 3; 1973, c. 1389, s. 1; 1975, c. 716, s. 5; 1977, c. 337; 1979, 2nd Sess., c. 1280, ss. 2, 3; 1981 (Reg. Sess., 1982), c. 1258, s. 1; 1985 (Reg. Sess., 1986), c. 982, s. 24; 1991, c. 624, ss. 6, 7; c. 672, s. 7; c. 726, s. 23; 1993, c. 467, s. 2; 1993 (Reg. Sess., 1994), c. 761, s. 5.)

§ 20-67. Notice of change of address or name.

(a) Address. — A person whose address changes from the address stated on a certificate of title or registration card must notify the Division of the change within 60 days after the change occurs. The person may obtain a duplicate certificate of title or registration card stating the new address but is not required to do so. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.

(b) Name. — A person whose name changes from the name stated on a certificate of title or registration card must notify the Division of the change within 60 days after the change occurs. The person may obtain a duplicate certificate of title or registration card but is not required to do so.

(c) Fee. — G.S. 20-85 sets the fee for a duplicate certificate of title or registration card. (1937, c. 407, s. 31; 1955, c. 554, s. 4; 1975, c. 716, s. 5; 1979, c. 106; 1997-122, s. 7.)

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, rewrote the section.

§ 20-71. Altering or forging certificate of title, registration card or application, a felony; reproducing or possessing blank certificate of title.

Editor's Note. — Session Laws 1993, c. 539, s. 1251, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-71.1. Registration evidence of ownership; ownership evidence of defendant's responsibility for conduct of operation.

CASE NOTES

But Prima Facie Case of Agency Does Not Compel a Verdict against Defendant. —

The prima facie showing of agency under this section only permits, and does not compel, a finding for the plaintiff on the issue of agency. Thompson v. Three Guys Furn. Co., 122 N.C. App. 340, 469 S.E.2d 583 (1996).

Part 3A. Salvage Titles.

§ 20-71.2. Declaration of purpose.

CASE NOTES

Cited in Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996).

§ 20-71.3. Titles and registration cards to be branded.

Motor Vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded. As used herein "branded" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as (a) Flood Vehicle, (b) Non-U.S.A. Vehicle, (c) Reconstructed Vehicle, (d) Salvage Motor Vehicle, or (e) Salvage Rebuilt Vehicle or other classification authorized by law. Any motor vehicle up to six model years old damaged by collision or other occurrence which is to be retitled in this State shall be subject to preliminary and final inspections by the Enforcement Section of the Division, and the Division shall refuse to issue a title to a vehicle up to six model years old which has not undergone a preliminary inspection. These inspections serve as an antitheft measure and do not certify the safety or roadworthiness of a vehicle. Any motor vehicle which has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered. A motor vehicle titled in another state and damaged by collision or other occurrence may be repaired and an unbranded title issued in North Carolina only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value. The Commissioner shall prepare necessary forms and may adopt regulations required to carry out the provisions of this Part 3A. The title shall reflect the branding until surrendered to or cancelled by the Commissioner. (1987, c. 607, s. 1; 1987 (Reg. Sess., 1988), c. 1105, s. 2; 1989, c. 455, s. 3; 1989 (Reg. Sess., 1990), c. 916, s. 1; 1997-443, s. 32.26.)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, twice inserted "up to six model years old" and inserted the fourth sentence.

§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 337, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Damage to Vehicle Obvious. — Where defendant ignored statements made by the previous owner, signs of damage to the truck, and owner failed to provide a damage disclosure statement to plaintiff, defendant was either grossly negligent or recklessly disregarded indications made by the previous owner, and knew or reasonably should have known of damage to the vehicle which exceeded twenty-five percent (25%) of the vehicle's fair market value. Payne v. Parks Chevrolet, Inc., 119 N.C. App. 383, 458 S.E.2d 716 (1995).

Defendants violated this section and § 75-1.1 when they did not give plaintiffs a written damage disclosure statement that van had been involved in a collision to the extent that the cost of the van's repairs exceeded twenty-five percent of its fair market retail value. Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996).

Defendants committed unfair and deceptive trade practices where car sold by defendants was severely structurally damaged, was not safe to operate, and plaintiff was misled by defendants into believing otherwise. Huff v. Autos Unlimited, Inc., 124 N.C. App. 410, 477 S.E.2d 86 (1996).

Cited in Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996).

Part 4. Transfer of Title or Interest.

§ 20-72. Transfer by owner.

Editor's Note. — Session Laws 1993, c. 539, s. 338, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Stated in Hughes v. Young, 115 N.C. App. 325, 444 S.E.2d 248 (1994).

§ 20-73. New owner must get new certificate of title.

Editor's Note. — Session Laws 1993, c. 539, s. 339, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-74. Penalty for making false statement about transfer of vehicle.

Editor's Note. — Session Laws 1993, c. 539, s. 340, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-75. When transferee is dealer or insurance company.

When the transferee of a vehicle registered under this Article is:

(1) A dealer who is licensed under Article 12 of this Chapter and who holds the vehicle for resale; or

(2) An insurance company taking the vehicle for sale or disposal for salvage purposes where the title is taken as a part of a bona fide claim settlement transaction and only for the purpose of resale,

the transferee shall not be required to register the vehicle nor forward the certificate of title to the Division as provided in G.S. 20-73.

To assign or transfer title or interest in the vehicle, the dealer or insurance company shall execute, in the presence of a person authorized to administer oaths, a reassignment and warranty of title on the reverse of the certificate of title in the form approved by the Division, which shall include the name and address of the transferee. The title to the vehicle shall not pass or vest until the reassignment is executed and the motor vehicle delivered to the transferee.

The dealer transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except:

(1) Where a security interest in the motor vehicle is obtained from the transferee in payment of the purchase price or otherwise, the dealer shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new certificate of title and necessary fees to the Division within 20 days; or

(2) Where the transferee has the option of cancelling the transfer of the vehicle within 10 days of delivery of the vehicle, the dealer shall deliver the certificate of title to the transferee at the end of that period. Delivery need not be made if the contract for sale has been rescinded in writing by all parties to the contract.

Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a Class 2 misdemeanor.

The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1. (1937, c. 407, s. 39; 1961, c. 835, s. 9; 1963, c. 552, s. 5; 1967, c. 760; 1973, c. 1095, s. 3; 1975, c. 716, s. 5; 1993, c. 440, s. 12; c. 539, s. 341; 1994, Ex. Sess., c. 24, s. 14(c); 1997-327, s. 2.1.)

Editor's Note. — Session Laws 1993, c. 539, s. 341, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1997 amendment, effective July 25, 1997, substituted "which shall include" for "including in such reassignment" in the second paragraph, added both of the subdivision (1) designations, added the first subdivision (2) designation, added the second subdivision (2); and made stylistic changes.

§ 20-77. Transfer by operation of law; sale under mechanic's or storage lien; unclaimed vehicles.

(a) Whenever the title or interest of an owner in or to a vehicle shall pass to another by operation of law, as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise than by voluntary transfer, the transferee shall secure a new certificate of title upon proper application, payment of the fees provided by law, and presentation of the last certificate of title, if available and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of interest in or to chattels in such cases.

(b) In the event of transfer as upon inheritance, devise or bequest, the Division shall, upon a receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title and license as otherwise provided for transfers. If a decedent dies intestate and no administrator has qualified or the clerk of superior court has not issued a certificate of assignment as part of the widow's year's allowance, or if a decedent dies testate with a small estate and leaving a purported will, which, in the opinion of the clerk of superior court, does not justify the expense of probate and administration and probate and administration is not demanded by any interested party entitled by law to demand same, and provided that the purported will is filed in the public records of the office of the clerk of the superior court, the Division may upon affidavit executed by all heirs effect such transfer. The affidavit shall state the name of the decedent, date of death, that the decedent died intestate or testate and no administration is pending or expected, that all debts have been paid or that the proceeds from the transfer will be used for that purpose, the names, ages and relationship of all heirs and devisees (if there be a purported will), and the name and address of the transferee of the title. A surviving spouse may execute the affidavit and transfer the interest of the decedent's minor or incompetent children where such minor or incompetent does not have a guardian. A transfer under this subsection shall not affect the validity nor be in prejudice of any creditor's lien.

(c) Mechanic's or Storage Lien. — In any case where a vehicle is sold under a mechanic's or storage lien, or abandoned property, the Division shall be given a 20-day notice as provided in G.S. 20-114.

(d) An operator of a place of business for garaging, repairing, parking or storing vehicles for the public in which a vehicle remains unclaimed for 10 days, or the landowners upon whose property a motor vehicle has been abandoned for more than 30 days, shall, within five days after the expiration of that period, report the vehicle as unclaimed to the Division. Failure to make such report shall constitute a Class 3 misdemeanor.

Any vehicle which remains unclaimed after report is made to the Division may be sold by such operator or landowner in accordance with the provisions relating to the enforcement of liens and the application of proceeds of sale of Article 1 of Chapter 44A.

(e) Any person, who shall sell a vehicle to satisfy a mechanic's or storage lien or any person who shall sell a vehicle as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise by operation of law, shall remove any license plates attached thereto and return them to the Division. (1937, c. 407, s. 41; 1943, c. 726; 1945, cc. 289, 714; 1955, c. 296, s. 1; 1959, c. 1264, s. 3; 1961, c. 360, ss. 12, 13; 1967, c. 562, s. 8; 1971, cc. 230, 512, 876; 1973, c. 1386, ss. 1, 2; c. 1446, s. 21; 1975, c. 438, s. 2; c. 716, s. 5; 1993, c. 539, s. 342; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 635, s. 1.)

Editor's Note. — Session Laws 1993, c. 539, s. 342, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, in the first sentence of subsection (d), substituted "10 days" for "30 days", and substituted "30 days" for "60 days".

Part 5. Issuance of Special Plates.

§ 20-79. Dealer license plates.

(a) How to Get a Dealer Plate. — A dealer licensed under Article 12 of this Chapter may obtain a dealer license plate by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division. The required fee is the amount set by G.S. 20-87(7).

(b) Number of Plates. — A dealer who was licensed under Article 12 of this Chapter for the previous 12-month period ending April 30 may obtain the number of dealer license plates allowed by the following table; the number allowed is based on the number of motor vehicles the dealer sold during the relevant 12-month period and the average number of qualifying sales representatives the dealer employed during that same 12-month period:

Vehicles Sold In Relevant 12-Month Period	Maximum Number of Plates
Fewer than 12	1
At least 12 but less than 25	4
At least 25 but less than 37	5
At least 37 but less than 49	6
49 or more	At least 6, but no more than 4 times the average number of qualifying sales representatives employed by the dealer during the relevant 12-month period.

A dealer who was not licensed under Article 12 of this Chapter for part or all of the previous 12-month period ending April 30 may obtain the number of dealer license plates that equals four times the number of qualifying sales representatives employed by the dealer on the date the dealer files the application. A "qualifying sales representative" is a sales representative who works for the dealer at least 25 hours a week on a regular basis and is compensated by the dealer for this work.

A dealer who sold fewer than 49 motor vehicles the previous 12-month period ending April 30 but has sold at least that number since May 1 may apply for additional dealer license plates at any time. The maximum number of dealer license plates the dealer may obtain is the number the dealer could have obtained if the dealer had sold at least 49 motor vehicles in the previous 12-month period ending April 30.

A dealer who applies for a dealer license plate must certify to the Division the number of motor vehicles the dealer sold in the relevant period. Making a material misstatement in an application for a dealer license plate is grounds for the denial, suspension, or revocation of a dealer's license under G.S. 20-294.

(c) Form and Duration. — A dealer license plate is subject to G.S. 20-63, except for the requirement that the plate display the registration number of a motor vehicle and the requirement that the plate be a "First in Flight" plate. In addition, a dealer license plate must have a distinguishing symbol identifying the plate as a dealer license plate.

A dealer license plate is issued for a fiscal year beginning July 1 and ending June 30. During the fiscal year for which it is issued, a dealer may transfer a dealer license plate from one vehicle to another. When one of the following occurs, a dealer must surrender to the Division all dealer license plates issued to the dealer:

(1) The dealer surrenders the license issued to the dealer under Article 12 of this Chapter.

(2) The Division suspends or revokes the license issued to the dealer under Article 12 of this Chapter.

(3) The Division rescinds the dealer license plates because of a violation of the restrictions on the use of a dealer license plate.

To obtain a dealer license plate after it has been surrendered, the dealer must file a new application for a dealer license plate and pay the required fee for the plate.

(d) Restrictions on Use. — A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

(1) Is part of the inventory of the dealer.

(2) Is not consigned to the dealer.

(3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.

(4) Is not used by the dealer in another business in which the dealer is engaged.

(5) Is driven on a highway by a person who carries a copy of the registration card for the dealer plates issued to the dealer while driving the motor vehicle and who meets one of the following descriptions:

a. Has a demonstration permit to test-drive the motor vehicle and carries the demonstration permit while driving the motor vehicle.

b. Is an officer or sales representative of the dealer and is driving the vehicle for a business purpose of the dealer.

c. Is an employee of the dealer and is driving the vehicle in the course of employment.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

(e) Sanctions. — The following sanctions apply when a motor vehicle displaying a dealer license plate is driven in violation of the restrictions on the use of the plate:

(1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of fifty dollars ($50.00).

(2) The dealer to whom the plate is issued is subject to a civil penalty imposed by the Division of two hundred dollars ($200.00).

(3) The Division may rescind all dealer license plates issued to the dealer whose plate was displayed on the motor vehicle.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue.

(f) Transfer of Dealer Registration. — No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used. (1937, c. 407, s. 43; 1947, c. 220, s. 2; 1949, c. 583, s. 3; 1951, c. 985, s. 2; 1959, c. 1264, s. 3.5; 1961, c. 360, s. 15; 1975, c. 716, s. 5; 1979, c. 239; c. 612, s. 1; 1985, c. 764, s. 21; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1989, c. 770, s. 74.1(a); 1993, c. 321, s. 169.4; c. 440, s. 2; c. 539, s. 343; 1993 (Reg. Sess., 1994), c. 697, ss. 1, 2; c. 761, s. 6; 1997-335, s. 1.)

Editor's Note. — The note appearing in the 1993 replacement pamphlet for this Chapter which refers to Session Laws 1993, c. 310, belongs under § 20-97.

Session Laws 1993, c. 539, s. 343, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), effective October 1, 1994, and applicable to offenses occurring on or after that date, amended this section as it read prior to the amendment by Session Laws 1993, c. 440, s. 2, by substituting "Class 2 misdemeanor" for "misdemeanor and for each offense shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) and may be imprisoned for not more than 60 days, or both such fine and imprisonment" in the last paragraph of subsection (a). Because the language amended by c. 539, s. 343 has been deleted by the amendment by c. 440, s. 2, the amendment by c. 539, s. 343 was not given effect. Section 343 of Chapter 539 of the 1993 Session Laws was repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 6, effective July 16, 1994.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 697, s. 1, effective July 1, 1996, deleted the former last paragraph of subsection (d) of this section, which read "A dealer who sells, trades, or services farm tractors may use a dealer license plate on a vehicle that is owned by the dealer and is used to haul farm tractors or any other farm related equipment sold, traded, or serviced by the dealer."

The 1997 amendment, effective January 1, 1998, rewrote subdivision (d)(5).

CASE NOTES

Applied in In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

Cited in McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487, cert. denied, 337 N.C. 694, 448 S.E.2d 528 (1994).

§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.

(a) The Division may, subject to the limitations and conditions hereinafter set forth, deliver temporary registration plates or markers designed by said Division to a dealer duly registered under the provisions of this Article who applies for at least 25 such plates or markers and who encloses with such application a fee of one dollar ($1.00) for each plate or marker for which application is made. Such application shall be made upon a form prescribed and furnished by the Division. Dealers, subject to the limitations and conditions hereinafter set forth, may issue such temporary registration plates or markers to owners of vehicles, provided that such owners shall comply with the pertinent provisions of this section.

(b) Every dealer who has made application for temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to him, and shall also maintain in permanent form a record of all temporary registration plates or markers issued by him, and in addition thereto, shall maintain in permanent form a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers that the Division may require. Each record shall be kept for a period of at least one year from the date of entry of such record. Every dealer shall allow full and free access to such records during regular business hours, to duly authorized representatives of the Division and to peace officers.

(c) Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Division and deliver it with the registration plate or marker to the owner.

(d) A dealer shall:

(1) Not issue, assign, transfer, or deliver temporary registration plates or markers to anyone other than a bona fide purchaser or owner of a vehicle which he has sold.

(2) Not issue a temporary registration plate or marker without first obtaining from the purchaser or owner a written application for titling and registration of the vehicle and the applicable fees.

(3) Within 10 working days, mail or deliver the application and fees to the Division or deliver the application and fees to a local license agency for processing. Delivery need not be made if the contract for sale has been rescinded in writing by all parties to the contract.

(4) Not deliver a temporary registration plate to anyone purchasing a vehicle that has an unexpired registration plate that is to be transferred to the purchaser.

(5) Not lend to anyone, or use on any vehicle that he may own, any temporary registration plates or markers.

A dealer may issue temporary markers, without obtaining the written application for titling and registration or collecting the applicable fees, to nonresidents for the purpose of removing the vehicle from the State.

(e) Every dealer who issues temporary plates or markers shall write clearly and indelibly on the face of the temporary registration plate or marker:

(1) The dates of issuance and expiration;

(2) The make, motor number, and serial numbers of the vehicle; and

(3) Any other information that the Division may require.

It shall be unlawful for any person to issue a temporary registration plate or marker containing any misstatement of fact or to knowingly write any false information on the face of the plate or marker.

(f) If the Division finds that the provisions of this section or the directions of the Division are not being complied with by the dealer, he may suspend, after a hearing, the right of a dealer to issue temporary registration plates or markers.

(g) Every person to whom temporary registration plates or markers have been issued shall permanently destroy such temporary registration plates or markers immediately upon receiving the annual registration plates from the Division: Provided, that if the annual registration plates are not received within 30 days of the issuance of the temporary registration plates or markers, the owner shall, notwithstanding, immediately upon the expiration of such 30-day period, permanently destroy the temporary registration plates or markers.

(h) Temporary registration plates or markers shall expire and become void upon the receipt of the annual registration plates from the Division, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 30 days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Division for temporary registration plates or markers shall be allowed, except in the event that the Division discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Division and the dealer may petition for a refund.

(i) A temporary registration plate or marker may be used on the vehicle for which issued only and may not be transferred, loaned, or assigned to another. In the event a temporary registration plate or marker or temporary registration certificate is lost or stolen, the owner shall permanently destroy the remaining plate or marker or certificate and no operation of the vehicle for which the lost or stolen registration certificate, registration plate or marker has been issued shall be made on the highways until the regular license plate is received and attached`thereto.

(j) The Commissioner of Motor Vehicles shall have the power to make such rules and regulations, not inconsistent herewith, as he shall deem necessary for the purpose of carrying out the provisions of this section.

(k) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 shall apply in like manner to temporary registration plates or markers as is applicable to nontemporary plates. (1957, c. 246, s. 1; 1963, c. 552, s. 8; 1975, c. 716, s. 5; 1985, c. 95; c. 263; 1997-327, ss. 1, 2.)

Effect of Amendments. — Session Laws 1997-327, ss. 1 and 2, effective July 25, 1997, rewrote subsections (d) and (e).

§ 20-79.2. Transporter plates.

(a) Who Can Get a Plate. — A person engaged in a business requiring the limited operation of a motor vehicle for any of the following purposes may obtain a transporter plate authorizing the movement of the vehicle for the specific purpose:

(1) To facilitate the manufacture, construction, rebuilding, or delivery of new or used truck cabs or bodies between manufacturer, dealer, seller, or purchaser.

(2) To repossess a motor vehicle.

(3) To pick up a motor vehicle that is to be repaired or otherwise prepared for sale by a dealer, to road-test the vehicle, if it is repaired, within a 10-mile radius of the place where it is repaired, and to deliver the vehicle to the dealer.

(4) To move a motor vehicle that is owned by the business and is a replaced vehicle offered for sale.

(5) To take a motor vehicle either to or from a motor vehicle auction where the vehicle will be or was offered for sale.

(6) To road-test a repaired truck whose GVWR is at least 15,000 pounds when the test is performed within a 10-mile radius of the place where the truck was repaired and the truck is owned by a person who has a fleet of at least five trucks whose GVWRs are at least 15,000 pounds and who maintains the place where the truck was repaired.

(7) To move a mobile office, a mobile classroom, or a mobile or manufactured home.

(8) To drive a motor vehicle that is at least 25 years old to and from a parade or another public event and to drive the motor vehicle in that event. A person who owns a motor vehicle that is at least 25 years old is considered to be in the business of collecting those vehicles.

(9) To drive a motor vehicle that is part of the inventory of a dealer to and from a motor vehicle trade show or exhibition or to, during, and from a parade in which the motor vehicle is used.

(10) To drive special mobile equipment in any of the following circumstances:
   a. From the manufacturer of the equipment to a facility of a dealer.
   b. From one facility of a dealer to another facility of a dealer.
   c. From a dealer to the person who buys the equipment from the dealer.

(b) How to Get a Plate. — A person may obtain a transporter plate by filing an application with the Division and paying the required fee. An application must be on a form provided by the Division and contain the information required by the Division. The fee for a transporter plate is one-half the fee set in G.S. 20-87(5) for a passenger motor vehicle of not more than 15 passengers.

(b1) Number of Plates. — The total number of transporter and dealer plates issued to a dealer may not exceed the number of dealer plates that can be issued to the dealer under G.S. 20-79(b). This restriction does not apply to a person who is not a dealer. Transporter plates issued to a dealer shall bear the words "Dealer-Transporter."

(b2) Sanctions. — The following sanctions apply when a motor vehicle displaying a "Dealer-Transporter" license plate is driven in violation of the restrictions on the use of the plate:

(1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of fifty dollars ($50.00).

(2) The dealer to whom the plate is issued is subject to a civil penalty imposed by the Division of two hundred dollars ($200.00).

(3) The Division may rescind all dealer license plates issued to the dealer whose plate was displayed on the motor vehicle.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue.

(c) **(See editor's note)** Form, Duration, and Transfer. — A transporter plate is a type of commercial license plate. A transporter plate issued to a dealer is issued on a fiscal-year basis. A transporter plate issued to a person who is not a dealer is issued on a calendar-year basis. During the year for which it is issued, a person may transfer a transporter plate from one vehicle to another as long as the vehicle is driven only for a purpose authorized by subsection (a) of this section. The Division may rescind a transporter plate that is displayed on a motor vehicle driven for a purpose that is not authorized by subsection (a) of this section. (1961, c. 360, s. 21; 1969, c. 600, s. 1; 1975, c. 222; 1979, c. 473, ss. 1, 2; c. 627, ss. 1-3; 1981, c. 727, ss. 1, 2; 1983, c. 426; 1987, c. 520; 1993, c. 440, s. 4; 1995, c. 50, s. 1; 1997-335, s. 2.)

Editor's Note. — Session Laws 1997-335, s. 3, provides: "Notwithstanding G.S. 20-79.2(c), as amended by this act, a transporter plate issued to a dealer for the 1997 calendar year expires June 30, 1998."

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, added subsections (b1) and (b2); and in subsection (c) inserted the second sentence, inserted "issued to a person who is not a dealer", and deleted "calendar" preceding "year for which it is issued."

§ 20-79.4. Special registration plates.

(a) General. — Upon application and payment of the required registration fees, a person may obtain from the Division a special registration plate for a motor vehicle registered in that person's name if the person qualifies for the registration plate. A special registration plate may not be issued for a vehicle registered under the International Registration Plan. A special registration plate may be issued for a commercial vehicle that is not registered under the International Registration Plan. A holder of a special registration plate who becomes ineligible for the plate, for whatever reason, must return the special plate within 30 days.

(b) Types. — The Division shall issue the following types of special registration plates:

(1) Administrative Officer of the Courts. — Issuable to the Director of the Administrative Office of the Courts. The plate shall bear the phrase "J-20".

(2) Amateur Radio Operator. — Issuable to an amateur radio operator who holds an unexpired and unrevoked amateur radio license issued by the Federal Communications Commission and who asserts to the Division that a portable transceiver is carried in the vehicle. The plate shall bear the phrase "Amateur Radio". The plate shall bear the operator's official amateur radio call letters, or call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each.

(3) American Legion. — Issuable to a member of the American Legion. The plate shall bear the words "American Legion" and the emblem of the American Legion. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(4) Civil Air Patrol Member. — Issuable to an active member of the North Carolina Wing of the Civil Air Patrol. The plate shall bear the phrase "Civil Air Patrol". A plate issued to an officer member shall begin with the number "201" and the number shall reflect the seniority of the member; a plate issued to an enlisted member, a senior member, or a cadet member shall begin with the number "501".

(5) Civic Club. — Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

(6) Class D Citizen's Radio Station Operator. — Issuable to a Class D citizen's radio station operator. For an operator who has been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the operator's official Class D citizen's radio station call letters. For an operator who has not been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the phrase "Citizen's Band Radio".

(7) Clerk of Superior Court. — Issuable to a current or retired clerk of superior court. A plate issued to a current clerk shall bear the phrase "Clerk Superior Court" and the letter "C" followed by a number that indicates the county the clerk serves. A plate issued to a retired clerk shall bear the phrase "Clerk Superior Court, Retired", the letter "C" followed by a number that indicates the county the clerk served, and the letter "X" indicating the clerk's retired status.

(8) Coast Guard Auxiliary Member. — Issuable to an active member of the United States Coast Guard Auxiliary. The plate shall bear the phrase "Coast Guard Auxiliary".

(9) Collegiate Insignia Plate. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a public or private college or university.

(10) Combat Veteran. — Issuable to a veteran of the armed forces who served in a combat zone, or in waters adjacent to a combat zone, during a period of war and who was separated from the armed forces under honorable conditions. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. A "period of war" is any of the following:

a. World War I, which began April 16, 1917, and ended November 11, 1918.

b. World War II, which began December 7, 1941, and ended December 31, 1946.

c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.

d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.

e. The Persian Gulf War.

f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

(11) County Commissioner. — Issuable to a county commissioner of a county in this State. The plate shall bear the words "County Commissioner" followed first by a number

representing the commissioner's county and then by a letter or number that distinguishes plates issued to county commissioners of the same county. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list and a letter or number to distinguish different cars owned by the county commissioners in that county. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(12) Disabled Veteran. — Issuable to a veteran of the armed forces of the United States who suffered a 100% service-connected disability.

(13) District Attorney. — Issuable to a North Carolina or United States District Attorney. The plate issuable to a North Carolina district attorney shall bear the letters "DA" followed by a number that represents the prosecutorial district the district attorney serves. The plate for a United States attorney shall bear the phrase "U.S. Attorney" followed by a number that represents the district the attorney serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(14) 82nd Airborne Division Association Member. — Issuable to a member of the 82nd Airborne Division Association, Inc. The plate shall bear the insignia of the 82nd Airborne Division Association, Inc. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(15) Fire Department or Rescue Squad Member. — Issuable to an active regular member or volunteer member of a fire department, rescue squad, or both a fire department and rescue squad. The plate shall bear the words "Firefighter", "Rescue Squad", or "Firefighter-Rescue Squad".

(16) Future Farmers of America. — Issuable to a member or a supporter of the National Future Farmers of America Organization. The plate shall bear the emblem of the organization and the letters "FFA". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(17) Historic Vehicle Owner. — Issuable for a motor vehicle that is at least 35 years old measured from the date of manufacture. The plate for an historic vehicle shall bear the word "Antique" unless the vehicle is a model year 1943 or older. The plate for a vehicle that is a model year 1943 or older shall bear the word "Antique" or the words "Horseless Carriage", at the option of the vehicle owner.

(18) Historical Attraction Plate. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit historical attraction located in North Carolina.

(19) Honorary Plate. — Issuable to a member of the Honorary Consular Corps, who has been certified by the U. S. State Department, the plate shall bear the words "Honorary Consular Corps" and a distinguishing number based on the order of issuance.

(20) Judge or Justice. — Issuable to a sitting or retired judge or justice in accordance with G.S. 20-79.6.

(21) Legion of Valor. — Issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The plate shall bear the emblem and name of the recipient's decoration.

(22) Legislator. — Issuable to a member of the North Carolina General Assembly. The plate shall bear "The Great Seal of the State of North Carolina" and, as appropriate, the word "Senate" or "House" followed by the Senator's or Representative's assigned seat number.

(23) Magistrate. — Issuable to a North Carolina magistrate. The plate shall bear the letters "MJ" followed by a number indicating the district court district the magistrate serves, then by a hyphen, and then by a number indicating the seniority of the magistrate. The Division shall use the number "9" to designate District Court Districts 9 and 9B.

(24) March of Dimes. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation.

(25) Marshal. — Issuable to a United States Marshal. The plate shall bear the phrase "U.S. Marshal" followed by a number that represents the district the Marshal serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(26) Military Reservist. — Issuable to a member of a reserve component of the armed forces of the United States. The plate shall bear the name and insignia of the appropriate reserve component. Plates shall be numbered sequentially for members of a component with the numbers 1 through 5000 reserved for officers, without regard to rank.

(27) Military Retiree. — Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(28) National Guard Member. — Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase "National Guard". A plate issued to an active member shall bear a number that reflects the seniority of the member; a plate issued to a commissioned officer shall begin with the number "1"; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number "1601"; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number "3001". The plate issued to a retired or separated member shall indicate the member's retired status.

(29) Olympic Games. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the Olympic Games.

(30) Partially Disabled Veteran. — Issuable to a veteran of the armed forces of the United States who suffered a service connected disability of less than 100%.

(31) Pearl Harbor Survivor. — Issuable to a veteran of the armed forces of the United States who was present at and survived the attack on Pearl Harbor on December 7, 1941. The plate will bear the phrase "Pearl Harbor Survivor" and the insignia of the Pearl Harbor Survivors' Association.

(32) Personalized. — Issuable to the registered owner of a motor vehicle. The plate will bear the letters or letters and numbers requested by the owner. The Division may refuse to issue a plate with a letter combination that is offensive to good taste and decency. The Division may not issue a plate that duplicates another plate.

(33) Prisoner of War. — Issuable to the following:
  a. A member or veteran member of the armed forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the armed forces.
  b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

(34) Professional Sports Fan. — Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. The Division shall not develop a professional sports fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate.

(35) Purple Heart Recipient. — Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded" and the letters "PH".

(36) Register of Deeds. — Issuable to a register of deeds. The plate shall bear the words "Register of Deeds" and the letter "R" followed by a number representing the county of the register of deeds. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list.

(37) Scenic Rivers. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Scenic Rivers" and a picture representing the unique beauty of the scenic rivers of North Carolina.

(38) School Technology. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the public school system in North Carolina.

(39) Sheriff. — Issuable to a current sheriff or to a retired sheriff who served as sheriff for at least 10 years before retiring. A plate issued to a current sheriff shall bear the word "Sheriff" and the letter "S" followed by a number that indicates the county the sheriff serves. A plate issued to a retired sheriff shall bear the phrase "Sheriff, Retired", the

letter "S" followed by a number that indicates the county the sheriff served, and the letter "X" indicating the sheriff's retired status.

(40) Soil and Water Conservation. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of water quality and environmental protection in North Carolina.

(41) Special Olympics. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the North Carolina Special Olympics.

(42) Square Dance Clubs. — Issuable to a member of a recognized square dance organization exempt from corporate income tax under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase identifying the club and the emblem of the club. The Division shall not issue a dance club plate authorized by this subdivision unless it receives at least 300 applications for that dance club plate.

(43) State Government Official. — Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.

(44) State Attraction. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit State or federal attraction located in North Carolina.

(45) Street Rod Owner. — Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase "Street Rod". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(46) Transportation Personnel. — Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters "DOT" followed by a number from 1 to 85, as designated by the Governor.

(47) U.S. Representative. — Issuable to a United States Representative for North Carolina. The plate shall bear the phrase "U.S. House" and shall be issued on the basis of Congressional district numbers.

(48) U.S. Senator. — Issuable to a United States Senator for North Carolina. The plates shall bear the phrase "U.S. Senate" and shall be issued on the basis of seniority represented by the numbers 1 and 2.

(49) Veterans of Foreign Wars. — Issuable to a member or a supporter of the Veterans of Foreign Wars. The plate shall bear the words "Veterans of Foreign Wars" or "VFW" and the emblem of the VFW. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(50) Vietnam Veteran. — Issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(51) Wildlife Resources. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing a native wildlife species occurring in North Carolina.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1042, s. 1, effective January 1, 1993. (1991, c. 672, s. 2; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 1042, s. 1; 1993, c. 543, s. 2; 1995, c. 326, ss. 1-3; c. 433, ss. 1, 4.1; 1997-156, s. 1; 1997-158, s. 1; 1997-339, s. 1; 1997-427, s. 1; 1997-461, ss. 2-4; 1997-477, s. 1; 1997-484, ss. 1-3.)

Editor's Note. —

Session Laws 1997-461, s. 5, provides: "The General Assembly finds that the number of special license plates has substantially increased since 1990. The proliferation of new special license plates raises issues about the types of plates the State may issue and the amount and distribution of funds derived from the plates. For this reason, House Bill 9 authorizes the Legislative Research Commission to study the number and types of special registration plates issued by the Division of Motor Vehicles and the amount and distribution of funds derived from the issuance of those plates. The Commission will report the results of this study, including any legislative recommendations, to the 1998 Session of the 1997 General Assembly. It is the intent and purpose of this section to assure that the General Assembly will not enact legislation authorizing the issuance of any more special license plates until the completion of this study."

This section is set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 1997-156, s. 1 effective June 6, 1997, added the 82nd Airborne Division Association license plate.

Session Laws 1997-158, s. 1, as amended by Session Laws 1997-461, s. 4 effective June 6, 1997, added the sheriff license plate.

Session Laws 1997-339, s. 1, effective July 25, 1997, added the Vietnam Veteran license plate.

Session Laws 1997-427, s. 1, effective August 22, 1997, inserted "or federal" in the State Attraction license plate.

Session Laws 1997-461, s. 2, effective January 1, 1998, and applicable to registration plates issued for periods beginning on or after that date, in subsection (a), in the second sentence deleted "with the exception of a personalized registration plate" following "special registration plate", deleted "or for a commercial truck" at the end of the sentence, and made minor punctuation changes; and added the third sentence.

Session Laws 1997-461, s. 3, effective September 1, 1997, added subdivision (b)(14a).

Session Laws 1997-477, s. 1, effective September 4, 1997, added the Soil and Water Conservation license plate.

Session Laws 1997-484, ss. 1-3, effective September 10, 1997, added the Combat Veterans, the March of Dimes, Scenic Rivers, and School Technology license plates.

§ 20-79.5. Special registration plates for elected and appointed State government officials.

(a) Plates. — The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representatives	3
President Pro Tempore of the Senate	4
Secretary of State	5

Position	Number on Plate
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10
Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Services Officer	14
Secretary of Administration	15
Secretary of Environment and Natural Resources	16
Secretary of Revenue	17
Secretary of Health and Human Services	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22
Governor's Staff	23-29
State Budget Officer	30
State Personnel Director	31
Advisory Budget Commission Nonlegislative Member	32-41
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53
Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-104
Post-Release Supervision and Parole Commission Member	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200

(b) Designation. — When the table in subsection (a) designates a range of numbers for certain officials, the number given an official in that group shall be assigned. The Governor shall assign a number for members of the Governor's staff, nonlegislative members of the

Advisory Budget Commission, nonlegislative members of the Board of Economic Development, nonlegislative members of the State Ports Authority, members of State boards and commissions, and for State employees. The Attorney General shall assign a number for the Attorney General's deputies and assistants.

The first number assigned to the Alcoholic Beverage Control Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Alcoholic Beverage Control Commission members on the basis of seniority. The first number assigned to the Utilities Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Utilities Commission members on the basis of seniority. The first number assigned to the Parole Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Parole Commission members on the basis of seniority. (1991, c. 672, s. 2; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 959, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 8(a); 1997-443, ss. 11A.118(a), 11A.119(a).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, in subsection (a), substituted "Legislative Services Officer" for "Legislative Administrative Officer," and inserted "Post-Release Supervision and" preceding "Parole Commission Member."

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 20-79.7. Fees for special registration plates and distribution of the fees.

(a) Fees. — Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00

Special Plate	Additional Fee Amount
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00.

(b) Distribution of Fees. — The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0

(c) Use of Funds in Special Registration Plate Account. —

(1) The Division shall deduct the costs of special registration plates, including the costs of issuing, handling, and advertising the availability of the special plates, from the Special Registration Plate Account.

(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this subsection, there is annually appropriated from the Special Registration Plate Account the sum of five hundred twenty-five thousand dollars ($525,000) to provide operating assistance for the Visitor Centers:

a. on U.S. Highway 17 in Camden County, ($75,000);
b. on U.S. Highway 17 in Brunswick County, ($75,000);
c. on U.S. Highway 441 in Macon County, ($75,000);
d. in the Town of Boone, Watauga County, ($75,000);
e. on U.S. Highway 29 in Caswell County, ($75,000);
f. on U.S. Highway 70 in Carteret County, ($75,000); and
g. on U.S. Highway 64 in Tyrrell County, ($75,000).

(3) The Division shall transfer the remaining revenue in the Account quarterly as follows:

a. Thirty-three percent (33%) to the account of the Department of Commerce to aid in financing out-of-state print and other media advertising under the program for the promotion of travel and industrial development in this State.

b. Fifty percent (50%) to the Department of Transportation to be used solely for the purpose of beautification of highways other than those designated as interstate. These funds shall be administered by the Department of Transportation for beautification purposes not inconsistent with good landscaping and engineering principles.

c. Seventeen percent (17%) to the account of the Department of Health and Human Services to promote travel accessibility for disabled persons in this State. These funds shall be used to collect and update site information on travel attractions designated by the Department of Commerce in its publications, to provide technical assistance to travel attractions concerning accommodation of disabled tourists, and to develop, print, and promote the publication ACCESS NORTH CAROLINA as provided in G.S. 168-2. Any funds allocated for these purposes that are neither spent nor obligated at the end of the fiscal year shall be transferred to the Department of Administration for removal of man-made barriers to disabled travelers at State-funded travel attractions. Guidelines for the removal of man-made barriers shall be developed in consultation with the Department of Health and Human Services. (1967, c. 413; 1971, c. 42; 1973, c. 507, s. 5; c. 1262, s. 86; 1975, c. 716, s. 5; 1977, c. 464, s. 3; c. 771, s. 4; 1979, c. 126, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1258, s. 6; 1983, c. 848; 1985, c. 766; 1987, c. 252; c. 738, s. 140; c. 830, ss. 113(a), 116(a)-(c); 1989, c. 751, s. 7(1); c. 774, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 31; 1991, c. 672, s. 3; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 959, s. 2; c. 1042, s. 2; c. 1044, ss. 33, 34; 1993, c. 321, s. 169.3(a); c. 543, s. 3; 1995, c. 163, s. 2; c. 324, s. 18.7(a); c. 433, ss. 2, 3; c. 507, s. 18.17(a); 1996, 2nd Ex. Sess., c. 18, s. 19.11(e); 1997-443, s. 11A.118(a); 1997-477, ss. 2, 3; 1997-484, ss. 4, 5.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.7(b), provides: "The Joint Legislative Transportation Oversight Committee shall investigate the continued use of the Special Registration Plate Fund as a source of operational funds for visitors centers and shall report the results of that investigation to the 1996 Session of the General Assembly."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that c. 507 shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 18.17(b), provides that the funds appropriated in subdivision (c)(2)g., as added by s. 18.17(a) of that act, should be paid to Partnership for the Sounds, Inc., by the Department of Transportation.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, in subdivision (c)(2), inserted "annually," deleted "for the 1995-96 fiscal year" preceding "to provide operating assistance," and deleted "and Welcome" following "Visitor."

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Session Laws 1997-477, ss. 2 and 3, effective September 4, 1997, in subsection (a) added "Soil and Water Conservation" under the column designated "Special Plate" and "$20.00" opposite "Soil and Water Conservation" under the column designated "Additional Fee Amount"; and in subsection (b) added "Soil and Water Conservation" under the column designated "Special Plate" and "$10", "$10", and "0" under the columns designated "SRPA", "CCAPA", "NHTF", respectively.

Session Laws 1997-484, ss. 4 and 5, effective September 10, 1997, added entries in the tables in subsections (a) and (b) for the March of Dimes, Scenic Rivers, and School Technology special plates.

§ 20-81.12. Collegiate insignia plates and certain other special plates.

(a) Collegiate Insignia Plates. — The Division must receive 300 or more applications for a collegiate insignia license plate for a college or university before a collegiate license plate may be developed. The color, design, and material for the plate must be approved by both the Division and the alumni or alumnae association of the appropriate college or university. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of in-State collegiate insignia plates to the Board of Governors of The University of North Carolina for in-State, public colleges and universities and to the respective board of trustees for in-State, private colleges and universities in proportion to the number of collegiate plates sold representing that institution for use for academic enhancement.

(b) Historical Attraction Plates. — The Division must receive 300 or more applications for an historical attraction plate representing a publicly owned or nonprofit historical attraction located in North Carolina and listed below before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of historical attraction plates to the organizations named below in proportion to the number of historical attraction plates sold representing that organization:

(1) Historical Attraction Within Historic District. — The revenue derived from the special plate shall be transferred quarterly to the appropriate Historic Preservation Commission, or entity designated as the Historic Preservation Commission, and used to maintain property in the historic district in which the attraction is located. As used in this subdivision, the term "historic district" means a district created under G.S. 160A-400.4.

(2) Nonprofit Historical Attraction. — The revenue derived from the special plate shall be transferred quarterly to the nonprofit corporation that is responsible for maintaining the attraction for which the plate is issued and used to develop and operate the attraction.

(3) State Historic Site. — The revenue derived from the special plate shall be transferred quarterly to the Department of

Cultural Resources and used to develop and operate the site for which the plate is issued. As used in this subdivision, the term "State historic site" has the same meaning as in G.S. 121-2(11).

(b1) Special Olympics Plates. — The Division must receive 300 or more applications for a special olympics plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of special olympics plates to the North Carolina Special Olympics, Inc., to be used to train volunteers to assist in the statewide games and to help pay the costs of the statewide games.

(b2) State Attraction Plates. — The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

(1) Friends of the Great Smoky Mountains National Park. — The revenue derived from the special plate shall be transferred quarterly to the Friends of the Great Smoky Mountains National Park, Inc., to be used for educational materials, preservation programs, capital improvements for the portion of the Great Smoky Mountains National Park that is located in North Carolina, and operating expenses of the Great Smoky Mountains National Park.

(1a) The North Carolina Arboretum. — The revenue derived from the special plate shall be transferred quarterly to The North Carolina Arboretum Society and used to help the Society obtain grants for the North Carolina Arboretum and for capital improvements to the North Carolina Arboretum.

(2) The North Carolina Zoological Society. — The revenue derived from the special plate shall be transferred quarterly to The North Carolina Zoological Society, Incorporated, to be used for educational programs and conservation programs at the North Carolina Zoo at Asheboro and for operating expenses of the North Carolina Zoo at Asheboro.

(b3) Wildlife Resources Plates. — The Division must receive 300 or more applications for a wildlife resources plate with a picture representing a particular native wildlife species occurring in North Carolina before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of wildlife resources plates to the Wildlife Conservation Account established by G.S. 143-247.2.

(b4) Olympic Games. — The Division may not issue an Olympic Games special plate unless it receives 300 or more applications for the plate and the U.S. Olympic Committee licenses, without charge, the State to develop a plate bearing the Olympic Games symbol and name. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Olympic Games plates to the N.C. Health and Fitness Foundation, Inc., which will allocate the funds as follows:

(1) Fifty percent (50%) to the U.S. Olympic Committee to assist in training olympic athletes.

(2) Twenty-five percent (25%) to North Carolina Amateur Sports to assist with administration of the State Games of North Carolina.

(3) Twenty-five percent (25%) to the Governor's Council on Physical Fitness and Health to support local fitness council development throughout North Carolina.

(b5) March of Dimes Plates. — The Division must receive 300 or more applications for a March of Dimes plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of March of Dimes plates to the Eastern Carolina Chapter of the March of Dimes Birth Defects Foundation. The Eastern Carolina Chapter shall disperse the revenue proportionately among the Eastern Carolina Chapter, the Western Carolina Chapter, the Greater Triad Chapter, and the Greater Piedmont Chapter of the March of Dimes Birth Defects Foundation based upon the population of the area each Chapter represents. The money must be used for the prevention of birth defects through local community services and educational programs and through research and development.

(b6) School Technology Plates. — The Division must receive 300 or more applications for a School Technology plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of School Technology plates to the State School Technology Fund, which is established under G.S. 115C-102.6D.

(b7) Scenic Rivers Plates. — The Division must receive 300 or more applications for a Scenic Rivers plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Scenic Rivers plates to the Clean Water Management Trust Fund established in G.S. 113-45.3.

(b8) Soil and Water Conservation Plates. — The Division must receive 300 or more applications for a soil and water conservation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the soil and water conservation plates to the Soil and Water Conservation Account established in G.S. 143B-297.1.

(c) General. — An application for a special license plate named in this section may be made at any time during the year. If the application is made to replace an existing current valid plate, the special plate must be issued with the appropriate decals attached. No refund shall be made to the applicant for any unused portion remaining on the original plate. The request for a special license plate named in this section may be combined with a request that the plate be a personalized license plate.

(d) through (g) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1042, s. 3, effective January 1, 1993. (1991, c. 758, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 33; c. 1042, s. 3; 1993, c. 543, s. 5; 1995, c. 433, s. 4; 1997-427, s. 2; 1997-477, s. 4; 1997-484, s. 6.)

Editor's Note. —

This section is set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 1997-427, s. 2, effective August 22, 1997, added subdivision (b2)(1); added the subdivision (b2)(2) designation and inserted "The" at the beginning; and redesignated former subdivision (b2)(2) as subdivision (b2)(3).

Session Laws 1997-477, s. 4, effective

September 4, 1997, added subsection (b5) now (b8).

Session Laws 1997-484, s. 6, effective September 10, 1997, added subsections (b5), (b6), and (b7).

§ 20-82: Repealed by Session Laws 1995, c. 163, s. 3, effective June 5, 1995.

Part 6. Vehicles of Nonresidents of State, etc.

§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.

The Division upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the State or any department thereof, or by any county, township, city or town, or by any board of education, or by any orphanage or civil air patrol, or incorporated emergency rescue squad, or incorporated REACT ("Radio Emergency Association of Citizen Teams") Team, or for any motor vehicle involved exclusively in the support of a disaster relief effort, shall collect six dollars ($6.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday school and church services and for no other purpose.

In lieu of the annual six dollars ($6.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles. The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of six dollars ($6.00) for each vehicle so registered and licensed.

The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.

The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of six dollars ($6.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to replacement vehicles to be used for the purposes above described and for which the plates were originally issued.

The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and for which the plates were originally issued. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.

In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to him pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy thereof shall be furnished to the registration division of the Division. Information as to the individual assignments of such registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that such reassignment shall be made to appear upon the index required herein within 20 days after such reassignment.

The Division of Motor Vehicles shall, upon appropriate certification of financial responsibility, issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services and to public and nonprofit agencies or organizations which provide transportation for or operate programs subject to and approved in accordance with standards adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services upon application and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate for vehicles registered to and operated by such agencies. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plate issued for such vehicle operated by a sheltered workshop and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used by the sheltered workshop designated on the registration card.

On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove. (1937, c. 407, s. 48; 1939, c. 275; 1949, c. 583, s. 1; 1951, c. 388; 1953, c. 1264; 1955, cc. 368, 382; 1967, c. 284; 1969, c. 800; 1971, c. 460, s. 1; 1975, c. 548; c. 716, s. 5; 1977, c. 370, s. 1; 1979, c. 801, s. 9; 1981 (Reg. Sess., 1982), c. 1159; 1983, c. 593, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 885; 1991 (Reg. Sess., 1992), c. 1030, s. 11; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Part 7. Title and Registration Fees.

§ 20-85. Schedule of fees.

(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1)	Each application for certificate of title	$35.00
(2)	Each application for duplicate or corrected certificate of title	10.00
(3)	Each application of repossessor for certificate of title	10.00
(4)	Each transfer of registration	10.00
(5)	Each set of replacement registration plates	10.00
(6)	Each application for duplicate registration card	10.00
(7)	Each application for recording supplementary lien	10.00
(8)	Each application for removing a lien from a certificate of title	10.00
(9)	Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale	10.00

(10) Each application for a salvage certificate of title made by an insurer .... 10.00.

(b) The fees collected under subdivisions (a)(1) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. The fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars ($15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5. (1937, c. 407, s. 49; 1943, c. 648; 1947, c. 219, s. 9; 1955, c. 554, s. 4; 1961, c. 360, s. 19; c. 835, s. 11; 1975, c. 430; c. 716, s. 5; c. 727; c. 875, s. 4; c. 879, s. 46; 1979, c. 801, s. 11; 1981, c. 690, s. 19; 1989, c. 692, s. 2.1; c. 700, s. 1; c. 770, s. 74.11; 1991, c. 193, s. 8; 1993, c. 467, s. 5; 1995, c. 50, s. 2; c. 390, s. 34; c. 509, s. 135.2(i).)

Editor's Note. —

Session Laws 1995, c. 509, s. 135.2(j), effective July 29, 1995, repealed the amendment to this section by Session Laws 1995, c. 390, s. 34, effective July 1, 1996, which would have rewritten the first sentence of subsection (b).

Session Laws 1989, c. 692, s. 8.4 as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State, provided that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, which contingency is not expected to occur for some 12 to 13 years, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State. The proceeds of bonds and notes issued pursuant to the State Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for the projects specified in Article 14 of Chapter 136. Subsection (b) of this section shall be amended effective the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the amendment will become effective the first day of the second calendar quarter following the date the letter is sent. The changes will not become effective until the State Treasurer certifies by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State that all of the bonds and notes issued pursuant to the State Highway Bond Act of 1996 have been retired or provision for their retirement has been made. The amendment will decrease the fee in subsection (b) to $25.00.

Effect of Amendments. — Session Laws 1995, c. 509, s. 135.2(i), effective July 1, 1996, in subsection (b), deleted "Thirty-one dollars and fifty cents ($31.50) of each title fee collected under subdivision (a)(1) of this section and all of" from the beginning, substituted "subdivisions (a)(1) through (a)(9)" for "subdivisions (a)(2) through (a)(9)", and deleted "remaining three dollars and fifty cents ($3.50) of the title fee collected under subdivision (a)(1) of this section and the" preceding "fees" in the second sentence.

§ 20-85.1. Registration by mail; one-day title service; fees.

Editor's Note. —

Session Laws 1989, c. 692, s. 8.4 as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State, provided that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, which contingency is not expected to occur for some 12 to 13 years, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State. The proceeds of bonds and notes issued pursuant to the State Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for the projects specified in Article 14 of Chapter 136. This section shall be amended effective the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the amendment will become effective the first day of the second calendar quarter following the date the letter is sent. The changes will not become effective until the State Treasurer certifies by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State that all of the bonds and notes issued pursuant to the State Highway Bond Act of 1996 have been retired or provision for their retirement has been made. The amendment will delete reference to the tax imposed by Article 5A of Chapter 105, decrease the fee for application for a certificate of title to $10.00, and delete subsection (b).

Session Laws 1989, c. 692, s. 8.4 as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State, provided that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, which contingency is not expected to occur for some 12 to 13 years, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State. The proceeds of bonds and notes issued pursuant to the State Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for the projects specified in Article 14 of Chapter 136. Subsection (b) of this section shall be amended effective the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the amendment will become effective the first day of the second calendar quarter following the date the letter is sent. The changes will not become effective until the State Treasurer certifies by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State that all of the bonds and notes issued pursuant to the State Highway Bond Act of 1996 have been retired or provision for their retirement has been made. The amendment will decrease the fee in subsection (b) to $25.00.

§ 20-87. Passenger vehicle registration fees.

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

(1) For-Hire Passenger Vehicles. — The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars ($78.00). The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15 passengers is one dollar and forty cents ($1.40) per hundred pounds of empty weight of the vehicle.

(2) U-Drive-It Passenger Vehicles. — U-drive-it passenger vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00

Automobiles: Forty-one dollars ($41.00) per year for each vehicle of fifteen-passenger capacity or less, and vehicles of over fifteen-passenger capacity shall be classified as buses and shall pay one dollar and forty cents ($1.40) per hundred pounds empty weight of each vehicle.

(3) Repealed by Session Laws 1981, c. 976, s. 3, effective January 1, 1982.

(4) Limousine Vehicles. — For-hire passenger vehicles on call or demand which do not solicit passengers indiscriminately

for hire between points along streets or highways, shall be taxed at the same rate as for-hire passenger vehicles under G.S. 20-87(1) but shall be issued appropriate registration plates to distinguish such vehicles from taxicabs.

(5) Private Passenger Vehicles. — There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than fifteen passengers	$20.00
Private passenger vehicles over fifteen passengers	23.00

Provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(6) Private Motorcycles. — The base tax on private passenger motorcycles shall be nine dollars ($9.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base tax shall be sixteen dollars ($16.00). A tax of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base tax. The revenue from the additional tax shall be deposited in the General Fund.

(7) Dealer License Plates. — The fee for a dealer license plate is the regular fee for each of the first five plates issued to the same dealer and is one-half the regular fee for each additional dealer license plate issued to the same dealer. The "regular fee" is the fee set in subdivision (5) of this section for a private passenger motor vehicle of not more than 15 passengers.

(8) Driveaway Companies. — Any person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates.

(9) House Trailers. — In lieu of other registration and license fees levied on house trailers under this section or G.S. 20-88, the registration and license fee on house trailers shall be seven dollars ($7.00) for the license year or any portion thereof.

(10) Special Mobile Equipment. — The fee for special mobile equipment for the license year or any part of the license year is the same as the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers.

(11) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee. (1937, c. 407, s. 51; 1939, c. 275; 1943, c. 648; 1945, c. 564, s. 1; c. 576, s. 2; 1947, c. 220, s. 3; c. 1019, ss. 1-3; 1949, c. 127; 1951, c. 819, ss. 1, 2; 1953, c. 478; c. 826, s. 4; 1955, c. 1313, s. 2;

1957, c. 1340, s. 3; 1961, c. 1172, s. 1a; 1965, c. 927; 1967, c. 1136; 1969, c. 600, ss. 3-11; 1971, c. 952; 1973, c. 107; 1975, c. 716, s. 5; 1981, c. 976, ss. 1-4; 1981 (Reg. Sess., 1982), c. 1255; 1983, c. 713, s. 61; c. 761, ss. 142, 143, 145; 1985, c. 454, s. 2; 1987, c. 333; 1989, c. 755, ss. 2, 4; c. 770, ss. 74.2, 74.3; 1989 (Reg. Sess., 1990), c. 830, s. 1; 1991 (Reg. Sess., 1992), c. 1015, s. 2; 1993, c. 320, s. 5; c. 440, s. 7; 1995 (Reg. Sess., 1996), c. 756, s. 7.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote subdivision (1).

§ 20-88. Property-hauling vehicles.

(a) Determination of Weight. — For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of 1,000 pounds or major fraction thereof, weights of over 500 pounds counted as 1,000 and weights of 500 pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for 6,000 pounds or less gross weight and the gross weight of such combination does not exceed 9,000 pounds, except wreckers as defined under G.S. 20-4.01(50). Those property-hauling vehicles registered for 4,000 pounds shall be permitted a tolerance of 500 pounds above the weight permitted under the table of weights and rates appearing in subsection (b) of this section.

(b) The following fees are imposed on the annual registration of self-propelled property-hauling vehicles; the fees are based on the type of vehicle and its weight:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	*Farmer Rate*
Not over 4,000 pounds	$0.23
4,001 to 9,000 pounds inclusive	.29
9,001 to 13,000 pounds inclusive	.37
13,001 to 17,000 pounds inclusive	.51
Over 17,000 pounds	.58

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	*General Rate*
Not over 4,000 pounds	$0.46
4,001 to 9,000 pounds inclusive	.63
9,001 to 13,000 pounds inclusive	.78
13,001 to 17,000 pounds inclusive	1.06
Over 17,000 pounds	1.20

(1) The minimum fee for a vehicle licensed under this subsection is seventeen dollars and fifty cents ($17.50) at the farmer rate and twenty-one dollars and fifty cents ($21.50) at the general rate.

(2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.

(3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.

(4) "Farm products" means any food crop, livestock, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term "farm products" also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.

(5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.

(5a) Notwithstanding any other provision of this Chapter, license plates issued pursuant to this subsection at the farmer rate may be purchased for any three-month period at one fourth of the annual fee.

(6) There shall be paid to the Division annually as of the first of January, the following fees for "wreckers" as defined under G.S. 20-4.01(50): a wrecker fully equipped weighing 7,000 pounds or less, seventy-five dollars ($75.00); wreckers weighing in excess of 7,000 pounds shall pay one hundred forty-eight dollars ($148.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) The fee for a semitrailer or trailer is ten dollars ($10.00) for each year or part of a year. The fee is payable on or before January 1 of each year. Upon the application of the owner of a semitrailer or trailer, the Division may issue a multiyear plate and registration card for the semitrailer or trailer for a fee of seventy-five dollars

($75.00). A multiyear plate and registration card for a semitrailer or trailer are valid until the owner transfers the semitrailer or trailer to another person or surrenders the plate and registration card to the Division. A multiyear plate may not be transferred to another vehicle.

The Division shall issue a multiyear semitrailer or trailer plate in a different color than an annual semitrailer or trailer plate and shall include the word "multiyear" on the plate. The Division may not issue a multiyear plate for a house trailer.

(d) Rates on trucks, trailers and semitrailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Repealed by Session Laws 1981, c. 976, s. 6, effective January 1, 1982.

(f) Repealed by Session Laws 1995, c. 163, s. 6, effective June 5, 1995.

(g) Repealed by Session Laws 1969, c. 600, s. 17.

(h) Repealed by Session Laws 1979, c. 419.

(i) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(j) No heavy vehicle subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954 (26 U.S.C. 4481) may be registered or licensed pursuant to G.S. 20-88 without proof of payment of the use tax imposed by that law. The proof of payment shall be on a form prescribed by the United States Secretary of Treasury pursuant to the provisions of 23 U.S.C. 141(d).

(k) A person may not drive a vehicle on a highway if the vehicle's gross weight exceeds its declared gross weight. A vehicle driven in violation of this subsection is subject to the axle-group weight penalties set in G.S. 20-118(e). The penalties apply to the amount by which the vehicle's gross weight exceeds its declared weight.

(*l*) **(Effective January 1, 1999)** The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word "permanent" on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall issue the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this section. (1937, c. 407, s. 52; 1939, c. 275; 1941, cc. 36, 227; 1943, c. 648; 1945, c. 569, s. 1; c. 575, s. 1; c. 576, s. 3; c. 956, ss. 1, 2; 1949, cc. 355, 361; 1951, c. 583; c. 819, ss. 1, 2; 1953, c. 568; c. 694, s. 1; c. 1122; 1955, c. 554, s. 8; 1957, c. 681, s. 2; c. 1215; 1959, c. 571; 1961, c. 685; 1963, c. 501; c. 702, ss. 2, 3; 1967, c. 1095, ss. 1, 2; 1969, c. 600, ss. 12-17; c. 1056, s. 1; 1973, c. 154, ss. 1, 2; c. 291; 1975, c. 716, s. 5; 1977, c. 638; 1979, c. 419; c. 631; 1981, c. 67; c. 690, ss. 29, 30; c. 976, s. 6; 1983, c. 43; c. 190, s. 1; c. 761, s. 144; c. 768, s. 4; 1991 (Reg. Sess., 1992), c. 947, s. 1; 1993, c. 467, s. 4; c. 543, s. 1; 1995, c. 109, s. 1; c. 163, s. 6; 1995 (Reg. Sess., 1996), c. 756, s. 8; 1997-466, s. 1.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added "Rate" following "Farmer" in the column heading of the first schedule table; substituted "General Rate" for "Private Hauler, Contract Carriers, Flat Rate Common Carriers and Exempt for Hire Carriers" in the column heading for the second schedule table; and substituted "general rate" for "private hauler, contract carrier, and common carrier rates" in subdivision (b)(1).

The 1997 amendment, effective January 1, 1999, added subsection (*l*).

§ 20-88.01. Revocation of registration for failure to register for or comply with road tax or pay civil penalty for buying or selling non-tax-paid fuel.

(a) Road Tax. — The Secretary of Revenue may notify the Commissioner of those motor vehicles that are registered or are required to be registered under Article 36B of Chapter 105 and whose owners or lessees, as appropriate, are not in compliance with Article 36B, 36C, or 36D of Chapter 105. When notified, the Commissioner shall withhold or revoke the registration plate for the vehicle.

(b) Non-tax-paid Fuel. — The Secretary of Revenue may notify the Commissioner of those motor vehicles for which a civil penalty imposed under G.S. 105-449.118 has not been paid. When notified, the Commissioner shall withhold or revoke the registration plate of the vehicle. (1983, c. 713, s. 54; 1989, c. 692, s. 6.1; c. 770, s. 74.5; 1991, c. 613, s. 4; 1995, c. 390, s. 11.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "36B, 36C, or 36D" for "36A or 36B" in subsection (a); and substituted "G.S. 105-449.118" for "G.S. 105-441.1 or G.S. 105-449.24" in subsection (b).

§ 20-88.1. Driver education.

(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose.

The driver education program established pursuant to this section must include the following:

(1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of this Chapter.

(2) At least six hours of instruction on the offense of driving while impaired and related subjects.

(3) At least six hours of actual driving experience. To the extent practicable, this experience may include at least one hour of instruction on the techniques of defensive driving.

(b) The State Board of Education shall adopt a salary range for driver education instructors who are public school employees and who do not hold teacher certificates.

Driver education instructors who are public school employees and who hold teacher certificates shall be paid on the teacher salary schedule. A day of employment for driver education instructors who hold teacher certificates shall be the same number of hours required of all regular classroom teachers as established by the local board of education.

(b1) The State Board of Education shall adopt rules to permit local boards of education to enter contracts with public or private entities to provide a program of driver education at public high schools. All driver education instructors shall meet the requirements established by the State Board of Education; provided, however, driver education instructors shall not be required to hold teacher certificates.

(c) All expenses incurred by the State in carrying out the provisions of this section shall be paid out of the Highway Fund.

(d) The Division shall prepare a driver license handbook that explains the traffic laws of the State and shall periodically revise the handbook to reflect changes in these laws. At the request of the Department of Education, the Division shall provide free copies of the handbook to that Department for use in the program of driver education offered at public high schools. (1957, c. 682, s. 1; 1965, c. 410, s. 1; 1975, c. 431; c. 716, s. 5; 1977, c. 340, s. 4; c. 1002; 1983, c. 761, s. 141; 1985 (Reg. Sess., 1986), c. 982, s. 25; 1991, c. 689, s. 32(a); 1993 (Reg. Sess., 1994), c. 761, s. 7; 1997-16, s. 3.)

Editor's Note. —

Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that this act becomes effective December 1, 1997.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, in subsection (a) substituted "must include the following" for "shall include instructions" following "this section"; added the subsection (a)(1) and (a)(2) designations, inserted "Instruction" at the beginning of subsection (a)(1), at the end of subsection (a)(1) deleted "In addition, this program shall include at"; at the beginning of subsection (a)(2) inserted "At", and added subsection (a)(3). See editor's note for applicability.

§ 20-91. Audit of vehicle registrations under the International Registration Plan.

(a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9, effective June 21, 1996.

(b) The Division may audit a person who registers or is required to register a vehicle under the International Registration Plan to determine if the person has paid the registration fees due under this Article. A person who registers a vehicle under the International Registration Plan must keep any records used to determine the information provided to the Division when registering the vehicle. The records must be kept for three years after the date of the registration to which the records apply. The Division may examine these records during business hours. If the records are not located in North Carolina and an auditor must travel to the location of the records, the registrant shall reimburse North Carolina for per diem and travel expense incurred in the performance of the audit. If more than one registrant is audited on the same out-of-state trip, the per diem and travel expense may be prorated.

The Commissioner may enter into reciprocal audit agreements with other agencies of this State or agencies of another jurisdiction for the purpose of conducting joint audits of any registrant subject to audit under this section.

(c) If an audit is conducted and it becomes necessary to assess the registrant for deficiencies in registration fees or taxes due based on the audit, the assessment will be determined based on the schedule of rates prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. If, during an audit, it is determined that:

(1) A registrant failed or refused to make acceptable records available for audit as provided by law; or

(2) A registrant misrepresented, falsified or concealed records, then all plates and cab cards shall be deemed to have been issued erroneously and are subject to cancellation. The Commissioner may assess the registrant for an additional percentage up to one hundred percent (100%) North Carolina registration fees at the rate prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. The Commissioner may cancel all registration and reciprocal privileges.

As a result of an audit, no assessment shall be issued and no claim for refund shall be allowed which is in an amount of less than ten dollars ($10.00).

The notice of any assessments will be sent to the registrant by registered or certified mail at the address of the registrant as it appears in the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in accordance with the requirements indicated above, will be sufficient regardless of whether or not it was ever received.

The failure of any registrant to pay any additional registration fees or tax within 30 days after the billing date, shall constitute cause for revocation of registration license plates, cab cards and reciprocal privileges.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9, effective June 21, 1996. (1937, c. 407, s. 55; 1939, c. 275; 1941, c. 36; 1943, c. 726; 1945, c. 575, s. 3; 1947, c. 914, s. 2; 1951, c. 190, s. 1; c. 819, s. 1; 1955, c. 1313, s. 2; 1967, c. 1079, s. 2; 1975, c. 716, s. 5; c. 767, s. 3; 1981, c. 859, s. 78; c. 976, s. 9; c. 1127, s. 53; 1995 (Reg. Sess., 1996), c. 756, s. 9.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, deleted subsections (a) and (d) and rewrote subsection (b).

§ 20-92: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 10, effective June 21, 1996.

§ 20-94. Partial payments.

Editor's Note. — Session Laws 1993, c. 539, s. 344, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-95. Prorated fee for license plate issued for other than a year.

(a) Calendar-Year Plate. — The fee for a calendar-year license plate issued on or after April 1 of a year is a percentage of the annual fee determined in accordance with the following table:

Date Plate Issued	Percentage of Annual Fee
April 1 through June 30	75%
July 1 through September 30	50
October 1 through December 31	25.

(a1) Plate With Renewal Sticker. — The fee for a license plate whose registration is renewed by means of a registration renewal sticker for a period of other than 12 months is a prorated amount of the annual fee. The prorated amount is one-twelfth of the annual fee multiplied by the number of full months in the period beginning the date the renewal sticker becomes effective until the date the renewal sticker expires, rounded to the nearest dollar.

(b) Scope. — This section does not apply to license plates issued pursuant to G.S. 20-79.1, 20-79.2, 20-84, 20-84.1, 20-87(9) or (10), and 20-88(c). (1937, c. 407, s. 59; 1947, c. 914, s. 3; 1979, c. 476; 1991, c. 672, s. 6; c. 726, s. 23; 1993, c. 440, s. 6; 1993 (Reg. Sess., 1994), c. 761, s. 8.)

§ 20-96. Collection of delinquent penalties and taxes.

A law enforcement officer who discovers that a vehicle used for the transportation of property is being operated on the highways and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:

(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.

(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid. When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State is not liable for damage to or loss of the property being hauled. (1937, c. 407, s. 60; 1943, c. 726; 1949, c. 583, s. 8; c. 1207, s. 4½; c. 1253; 1951, c. 1013, ss. 1-3; 1953, c. 694, ss. 2, 3; 1955, c. 554, s. 9; 1957, c. 65, s. 11; 1959, c. 1264, s. 5; 1973, c. 507, s. 5; 1985, c. 116, ss. 1-3; 1993, c. 539, s. 345; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 109, s. 2.)

Editor's Note. — Session Laws 1993, c. 539, s. 345, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-97. Taxes credited to Highway Fund; municipal vehicle taxes.

(a) State Taxes to Highway Fund. — All taxes levied under this Article are compensatory taxes for the use and privileges of the public highways of this State. The taxes collected shall be credited to the State Highway Fund. Except as provided in this section, no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State.

(b) General Municipal Vehicle Tax. — Cities and towns may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose.

(c) Municipal Vehicle Tax for Public Transportation. — A city or town that operates a public transportation system as defined in G.S. 105-550 may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident in the city or town. The tax authorized by this subsection is in addition to the tax authorized by subsection (b) of this section. A city or town may not levy a tax under this section, however, to the extent the rate of tax, when added to the general motor vehicle taxes levied by the city or town under subsection (b) of this section and under any local legislation, would exceed thirty dollars ($30.00) per year. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. Cities and towns shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems. This subsection does not apply to the City of Durham or to the cities and towns in Gaston County.

(d) Municipal Taxi Tax. — Cities and towns may levy a tax of not more than fifteen dollars ($15.00) per year upon each vehicle operated in the city or town as a taxicab. The proceeds of the tax may be used for any lawful purpose.

(e) No Additional Local Tax. — No county, city or town may impose a franchise tax, license tax, or other fee upon a motor carrier unless the tax is authorized by this section. (1937, c. 407, s. 61; 1941, c. 36; 1943, c. 639, ss. 3, 4; 1975, c. 716, s. 5; 1977, c. 433, s. 1; c. 880, s. 1; 1979, c. 173, s. 1; c. 216, s. 1; c. 217; c. 248, s. 1; c. 398; c. 400, s. 1; c. 458; c. 530, s. 1; c. 790; 1979, 2nd Sess., c. 1152; c. 1153, s. 1; c. 1155, s. 1; c. 1189; c. 1308, s. 1; 1981, cc. 74, 129, 210, 228, 310, 311, 312, 315, 368, 370, s. 10; c. 415, s. 10; cc. 857, 858, 991; 1981 (Reg. Sess., 1982), cc. 1202, 1250; 1983, cc. 9, 75; c. 106, s. 1; c. 188, ss. 1, 2; 1993, c. 321, s. 146; c. 456, s. 1; 1997-417, s. 2.)

Local Modification. — Alleghany: 1993, c. 456, s. 1.1, 1993 (Reg. Sess., 1994), c. 761, s. 9; Pamlico: 1993 (Reg. Sess., 1994), c. 751, s. 4; town of Carrboro: 1995, c. 339, s. 5.1; town of Chapel Hill: 1995, c. 339, s. 4.1.

By virtue of Session Laws 1995, c. 34, s. 4, City of Roanoke Rapids: 1989, c. 570 should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — Session Laws 1993, c. 479, s. 4, repealed Session Laws 1981, c. 310, which had amended this section by adding the Town of Enfield to a list of cities.

Effect of Amendments. — The 1997 amendment, effective August 21, 1997, rewrote this section.

§ 20-99. Remedies for the collection of taxes.

(a) If any tax imposed by this Chapter, or any other tax levied by the State and payable to the Commissioner of Motor Vehicles, or any portion of such tax, be not paid within 30 days after the same becomes due and payable, and after the same has been assessed, the Commissioner of Motor Vehicles shall issue an order under his hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Motor Vehicles the money collected by virtue thereof within a time to be therein specified, not less than 60 days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Chapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Chapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the Commissioner of Motor Vehicles shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Commissioner of Motor Vehicles or by any officer having authority to serve summonses. Said notice shall show:

(1) The name of the taxpayer and his address, if known;
(2) The nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
(3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall, within 10 days after service of said notice, answer the same by sending to the Commissioner of Motor Vehicles by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Commissioner shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Motor Vehicles by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Motor Vehicles or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in G.S. 105-267, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within 12 months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars ($200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section.

(c) In addition to the remedy herein provided, the Commissioner of Motor Vehicles is authorized and empowered to make a certificate setting forth the essential particulars relating to the said tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county [to] record the certificate in the same manner as a judgment, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court; said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and on personalty only from the date of the levy on such personalty and upon execution thereon no homestead or personal property exemption shall be allowed.

(d) The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes.

(e) The provisions, procedures, and remedies provided in this section apply to the collection of penalties imposed under the provisions of Article 3A of this Chapter and of G.S. 20-96, G.S. 20-118, or any other provisions of this Chapter imposing a tax or penalty for operation of a vehicle in excess of the weight limits provided in this Chapter and the Commissioner is authorized to collect such taxes or penalties by the use of the procedure established in subsections (a), (b), (c) and (d) of this section. (1937, c. 407, s. 63; 1945, c. 576, s. 4; 1951, c. 819, s. 1; 1955, c. 554, s. 10; 1971, c. 528, s. 12; 1995 (Reg. Sess., 1996), c. 756, s. 11; 1997-29, s. 11.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, deleted the last sentence of subsection (a), which read "Upon the issuance of said order to the sheriff, in the event the delinquent taxpayer shall be the operator of any common carrier of passengers or common carrier of property vehicle, the franchise certificate issued to such operator shall become null and void and shall be canceled by the Utilities Commissioner, and it shall be unlawful for any such common carrier of passengers or the operator of any common carrier of property vehicle to continue the operation under said franchise."

The 1997 amendment, effective July 1, 1997, in subsection (e), substituted "apply" for "shall be applicable", inserted "Article 3A of this chapter and of" preceding "G.S. 20-96" and inserted "G.S." preceding "20-118".

§ 20-101. Certain business vehicles to be marked.

A motor vehicle that is subject to 49 U.S.C. Part 390, the federal motor carrier safety regulations, must be marked as required by that Part. A motor vehicle that is not subject to those regulations, has a gross vehicle weight rating of more than 10,000 pounds, and is used in intrastate commerce must have the name of the owner printed on the side of the vehicle in letters not less than three inches in height. A motor vehicle that is subject to regulation by the North Carolina Utilities Commission must be marked as required by that Commission and as otherwise required by this section. (1937, c. 407, s. 65; 1951, c. 819, s. 1; 1967, c. 1132; 1985, c. 132; 1995 (Reg. Sess., 1996), c. 756, s. 12.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote this section.

Part 8. Anti-Theft and Enforcement Provisions.

§ 20-102.1. False report of theft or conversion a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 346, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-106. Receiving or transferring stolen vehicles.

Editor's Note. —

Session Laws 1993, c. 539, s. 1252, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-106.1. Fraud in connection with rental of motor vehicles.

Editor's Note. — Session Laws 1993, c. 539, s. 1253, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-106.2. Sublease and loan assumption arranging regulated.

Editor's Note. —

Session Laws 1993, c. 539, ss. 347 and 1254, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-107. Injuring or tampering with vehicle.

Editor's Note. — Session Laws 1993, c. 539, s. 348, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-108. Vehicles or component parts of vehicles without manufacturer's numbers.

Editor's Note. — Session Laws 1993, c. 539, s. 349, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-109. Altering or changing engine or other numbers.

Editor's Note. —

Session Laws 1993, c. 539, s. 1255, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-109.1. Surrender of titles to salvage vehicles.

(a) Option to Keep Title. — When a vehicle is damaged to the extent that it becomes a salvage vehicle and the owner submits a claim for the damages to an insurer, the insurer must determine whether the owner wants to keep the vehicle after payment of the claim. If the owner does not want to keep the vehicle after payment of the claim, the procedures in subsection (b) of this section apply. If the owner wants to keep the vehicle after payment of the claim, the procedures in subsection (c) of this section apply.

(b) Transfer to Insurer. — If a salvage vehicle owner does not want to keep the vehicle, the owner must assign the vehicle's certificate of title to the insurer when the insurer pays the claim. The insurer must send the assigned title to the Division within 10 days after receiving it from the vehicle owner. The Division must then send the insurer a form to use to transfer title to the vehicle from the insurer to a person who buys the vehicle from the insurer. If the insurer sells the vehicle, the insurer must complete the form and give it to the buyer. If the buyer rebuilds the vehicle, the buyer may apply for a new certificate of title to the vehicle.

(c) Owner Keeps Vehicle. — If a salvage vehicle owner wants to keep the vehicle, the insurer must give the owner an owner-retained salvage form. The owner must complete the form and give it to the insurer when the insurer pays the claim. The owner's signature on the owner-retained salvage form must be notarized. The insurer must send the completed form to the Division within 10 days after receiving it from the vehicle owner. The Division must then note in its vehicle registration records that the vehicle listed on the form is a salvage vehicle.

(d) Theft Claim on Salvage Vehicle. — An insurer that pays a theft loss claim on a vehicle and, upon recovery of the vehicle, determines that the vehicle has been damaged to the extent that it is a salvage vehicle must send the vehicle's certificate of title to the Division within 10 days after making the determination. The Division and the insurer must then follow the procedures set in subsection (b) of this section.

(e) Out-of-State Vehicle. — A person who acquires a salvage vehicle that is registered in a state that does not require surrender of the vehicle's certificate of title must send the title to the Division within 10 days after the vehicle enters this State. The Division and the person must then follow the procedures set in subsection (b) of this section.

(f) Sanctions. — Violation of this section is a Class 1 misdemeanor. In addition to this criminal sanction, a person who violates this section is subject to a civil penalty of up to one hundred dollars ($100.00), to be imposed in the discretion of the Commissioner.

(g) Fee. — G.S. 20-85 sets the fee for issuing a salvage certificate of title. (1973, c. 1095, s. 1; 1975, c. 716, s. 5; c. 799; 1983, c. 713, s. 94; 1989, c. 455, s. 5; 1993, c. 539, s. 350; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 50, s. 3; c. 517, s. 33.1.)

Editor's Note. — Session Laws 1993, c. 539, s. 350, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1995, c. 517, s. 41, contains a severability clause.

CASE NOTES

Cited in Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996).

§ 20-111. Violation of registration provisions.

Editor's Note. — Session Laws 1993, c. 539, ss. 351-353, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-112. Making false affidavit perjury.

Editor's Note. — Session Laws 1993, c. 539, s. 1256, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-113: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 13, effective June 21, 1996.

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

§ 20-115.1. Limitations on tandem trailers and semitrailers on certain North Carolina highways.

Editor's Note. — Session Laws 1993, c. 539, s. 354, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-116. Size of vehicles and loads.

(a) The total outside width of any vehicle or the load thereon shall not exceed 96 inches, except as otherwise provided in this section: Provided that when hogsheads of tobacco are being transported, a tolerance of six inches shall be allowed and that when sheet or bale tobacco is being transported the load does not exceed a width of 114 inches at the top of the load and the bottom of the load at the truck bed does not exceed the width of 102 inches inclusive of allowance for load shifting or settling. Provided, further, that vehicles (other than passenger buses) which do not exceed the overall width of 102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g).

(b) No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(c) No vehicle, unladen or with load, shall exceed a height of 13 feet, six inches. Provided, however, that neither the State of North Carolina nor any agency or subdivision thereof, nor any person, firm or corporation, shall be required to raise, alter, construct or reconstruct any underpass, wire, pole, trestle, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of 12 feet, six inches. Provided further, that the operator or owner of any vehicle having an overall height, whether unladen or with load, in excess of 12 feet, six inches, shall be liable for damage to any structure caused by such vehicle having a height in excess of 12 feet, six inches. The term "automobile transport" as used in this subsection shall mean only vehicles engaged exclusively in transporting automobiles, trucks and other commercial vehicles.

(d) A single vehicle having two axles shall not exceed 35 feet in length of extreme overall dimensions inclusive of front and rear bumpers. Provided, however, a bus or motor home with two axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers. A single vehicle having three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers. Provided, further, trucks transporting unprocessed cotton from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of front and rear bumpers. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers in an emergency may tow a combination tractor and trailer to the nearest feasible point for repair and/or storage: Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Division.

(f) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the foremost part of the vehicle. Under this subsection "load" shall include the boom on a self-propelled vehicle.

A utility pole carried by a self-propelled pole carrier may extend beyond the front overhang limit set in this subsection if the pole cannot be dismembered, the pole is less than 80 feet in length and does not extend more than 10 feet beyond the front bumper of the vehicle, and either of the following circumstances apply:

(1) It is daytime and the front of the extending load of poles is marked by a flag of the type required by G.S. 20-117 for certain rear overhangs.
(2) It is nighttime, operation of the vehicle is required to make emergency repairs to utility service, and the front of the extending load of poles is marked by a light of the type required by G.S. 20-117 for certain rear overhangs.

As used in this subsection, a "self-propelled pole carrier" is a vehicle designed to carry a pole on the side of the vehicle at a height of at least five feet when measured from the bottom of the brace used to carry the pole. A self-propelled pole carrier may not tow another vehicle when carrying a pole that extends beyond the front overhang limit set in this subsection.

(g) No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

Trucks, trailers or other vehicles when loaded with rock, gravel, stone or other similar substances which could blow, leak, sift or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading point, or if not so loaded, unless the load shall be securely covered by tarpaulin or some other suitable covering, or unless it is otherwise constructed so as to prevent any of its load from dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

Provided this section shall not be applicable to or in any manner restrict the transportation of seed cotton, of poultry or livestock or silage or other feed grain used in the feeding of poultry or livestock.

(h) Whenever there exist two highways of the State highway system of approximately the same distance between two or more points, the Department of Transportation may, when in the opinion of the Department of Transportation, based upon engineering and traffic investigation, safety will be promoted or the public interest will be served, designate one of the highways the "truck route" between those points, and to prohibit the use of the other highway by heavy trucks or other vehicles of a gross vehicle weight or axle load limit in excess of a designated maximum. In such instances the highways selected for heavy vehicle traffic shall be designated as "truck routes" by signs conspicuously posted, and the highways upon which heavy vehicle traffic is prohibited shall likewise be designated by signs conspicuously posted showing the maximum gross vehicle weight or axle load limits authorized for those highways. The operation of any vehicle whose gross vehicle weight or axle load exceeds the maximum limits shown on signs over the posted highway shall constitute a Class 2 misdemeanor: Provided, that nothing in this subsection shall prohibit a truck or other motor vehicle whose gross vehicle weight or axle load exceeds that prescribed for those highways from using them when its destination is located solely upon that highway, road or street: Provided, further, that nothing in this subsection shall prohibit passenger vehicles or other light vehicles from using any highways designated for heavy truck traffic.

(i) Repealed by Session Laws 1973, c. 1330, s. 39.

(j) Self-propelled grain combines of other farm equipment self-propelled, pulled or otherwise, not exceeding 18 feet in width may be operated on any highway, except a highway or section of highway that is a part of the National System of Interstate and Defense Highways: Provided that all such combines or equipment which exceed 10 feet in width may be so operated only under the following conditions:

(1) Said equipment may only be so operated during daylight hours; and

(2) Said equipment must display a red flag on front and rear, said flags shall not be smaller than three feet wide and four feet long and be attached to a stick, pole, staff, etc., not less than four feet long and shall be so attached to said equipment as to be visible from both directions at all times while being operated on the public highway for not less than 300 feet; and

(3) Equipment [covered] by this section, which by necessity must travel more than 10 miles or where by nature of the terrain or obstacles the flags referred to in subdivision (2) are not visible from both directions for 300 feet at any point along the proposed route, must be preceded at a distance of 300 feet and followed at a distance of 300 feet by a flagman in a vehicle having mounted thereon an appropriate warning light or flag.

(4) Every such piece of equipment so operated shall operate to the right of the center line when meeting traffic coming from the opposite direction and at all other times when possible and practical.

(5) Violation of this section shall not constitute negligence per se.

(6) When said equipment is causing a delay in traffic, the operator of said equipment shall move the equipment off the paved portion of the highway at the nearest practical location until the vehicles following said equipment have passed.

(k) Nothing in this section shall be construed to prevent the operation of passenger buses having an overall width of 102 inches, exclusive of safety equipment, upon the highways of this State which are 20 feet or wider and that are designated as the State primary system, or as municipal streets, when, and not until, the federal law and regulations thereunder permit the operation of passenger buses having a width of 102 inches or wider on the National System of Interstate and Defense Highways. (1937, c. 246; c. 407, s. 80; 1943, c. 213, s. 1; 1945, c. 242, s. 1; 1947, c. 844; 1951, c. 495, s. 1; c. 733; 1953, cc. 682, 1107; 1955, c. 296, s. 2; c. 729; 1957, c. 65, s. 11; cc. 493, 1183, 1190; 1959, c. 559; 1963, c. 356, s. 1; c. 610, ss. 1, 2; c. 702, s. 4; c. 1027, s. 1; 1965, c. 471; 1967, c. 24, s. 4; c. 710; 1969, cc. 128, 880; 1971, cc. 128, 680, 688, 1079; 1973, c. 507, s. 5; c. 546; c. 1330, s. 39; 1975, c. 148, ss. 1-5; c. 716, s. 5; 1977, c. 464, s. 34; 1979, cc. 21, 218; 1981, c. 169, s. 1; 1983, c. 724, s. 2; 1985, c. 587; 1987, c. 272; 1989, c. 277, s. 1; c. 790, s. 2; 1991, c. 112, s. 1; c. 449, ss. 1, 2.1; 1993, c. 539, s. 355; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 573, s. 1; c. 756, s. 14.)

Editor's Note. —
Session Laws 1993, c. 539, s. 355, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 573, s. 1, effective July 1, 1996, in subsection (f), substituted "foremost part of the vehicle" for "front wheels of such vehicle or the front bumper of such vehicle, if it is equipped with such a bumper", and added the last two paragraphs.

Session Laws 1995 (Reg. Sess., 1996), c. 756, s. 14, effective June 21, 1996, substituted "Federal Highway Administration and the safety rules of the Division" for "Interstate Commerce Commission and the safety regulations of the North Carolina Division of Motor Vehicles and the Department of Transportation" in the last sentence of subsection (e).

§ 20-117. Flag or light at end of load.

Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than 12 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. (1937, c. 407, s. 81; 1985, c. 455; 1997-178, s. 1.)

Effect of Amendments. — The 1997 amendment, effective June 12, 1997, added "or orange" following the first occurrence of "a red" and "or amber" following the second occurrence of "a red".

§ 20-118. Weight of vehicles and load.

(a) For the purposes of this section, the following definitions shall apply:

(1) Single-axle weight. — The gross weight transmitted by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) Tandem-axle weight. — The gross weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

(3) Axle group. — Any two or more consecutive axles on a vehicle or combination of vehicles.

(4) Gross weight. — The weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon.

(5) Light-traffic roads. — Any highway on the State Highway System, excepting routes designated I, U.S. or N.C., posted by the Department of Transportation to limit the axle weight below the statutory limits.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles*					
*Axles**	*2 Axles*	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
4	38000					
5	38000					
6	38000					
7	38000					
8 or less	38000	38000				
more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			
15		47000	52000			
16		48000	52500	58000		
17		48500	53500	58500		
18		49500	54000	59000		
19		50000	54500	60000		
20		51000	55500	60500	66000	
21		51500	56000	61000	66500	
22		52500	56500	61500	67000	
23		53000	57500	62500	68000	

*Distance Between Axles**	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles*					
	2 Axles	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
24		54000	58000	63000	68500	74000
25		54500	58500	63500	69000	74500
26		55500	59500	64000	69500	75000
27		56000	60000	65000	70000	75500
28		57000	60500	65500	71000	76500
29		57500	61500	66000	71500	77000
30		58500	62000**	66500	72000	77500
31		59000	62500**	67500	72500	78000
32		60000	63500**	68000	73000	78500
33			64000**	68500	74000	79000
34			64500**	69000	74500	80000
35			65500**	70000	75000	
36			66000**	70500	75500	
37			66500**	71000	76000	
38			67500**	72000	77000	
39			68000	72500	77500	
40			68500	73000	78000	
41			69500	73500	78500	
42			70000	74000	79000	
43			70500	75000	80000	
44			71500	75500		
45			72000	76000		
46			72500	76500		
47			73500	77500		
48			74000	78000		
49			74500	78500		
50			75500	79000		
51			76000	80000		
52			76500			
53			77500			
54			78000			
55			78500			
56			79500			
57			80000			

*Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

**See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. — The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:

a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.

(3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.

(4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.

b. Meats or agricultural crop products transported from a farm to first market.

c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.

d. Livestock or poultry transported from their point of origin to first market.

e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.

f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms "recyclable" and "processing" have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

h. Treated sludge collected from a wastewater treatment facility.

(6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.

(7) A wrecker may tow a disabled vehicle or combination of vehicles in an emergency to the nearest feasible point for parking or storage without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

(8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

(9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12.

(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road.

(12) Subsections (b) and (e) of this section do not apply to a vehicle that (i) is hauling agricultural crops from the farm where they were grown to first market, (ii) is within 35 miles of that farm, (iii) does not operate on an interstate highway or posted bridge while hauling the crops, and meets one of the following descriptions:

a. Is a five-axle combination with a gross weight of no more than 90,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds.

(d) The Department of Transportation is authorized to abrogate certain exceptions. The exceptions provided for in G.S. 20-118(c)(4) and 20-118(c)(5) as applied to any light-traffic road may be abrogated by the Department of Transportation upon a determination of the Department of Transportation that undue damage to such light-traffic road is resulting from such vehicles exempted by G.S. 20-118(c)(4) and 20-118(c)(5). In those cases where the exemption to the light-traffic roads are abrogated by the Department of Transportation, the Department shall post the road to indicate no exemptions.

(e) Penalties. —

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision

(c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section is not punishable under G.S. 20-176.

(f) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 15, effective July 16, 1994.

(g) General Statutes 20-118 shall not be construed to permit the gross weight of any vehicle or combination in excess of the safe load carrying capacity established by the Department of Transportation on any bridge pursuant to G.S. 136-72.

(h) Tolerance. — A vehicle may exceed maximum and the inner axle-group weight limitations set forth in subdivision (b)(3) of this section by a tolerance of ten percent (10%). This exception does not authorize a vehicle to exceed either the single-axle or tandem-axle weight limitations set forth in subdivisions (b)(1) and (b)(2) of this section, or the maximum gross weight limit of 80,000 pounds. This exception does not apply to bridges posted under G.S. 136-72 or to vehicles operating on interstate highways. The tolerance allowed under this subsection does not authorize the weight of a vehicle to exceed the weight for which that vehicle is licensed under G.S. 20-88. No tolerance on the single-axle weight or the tandem-axle weight provided for in subdivisions (b)(1) and (b)(2) of this section shall be granted administratively or otherwise. The Department of Transportation shall report back to the Transportation Oversight Committee and to the General Assembly on the effects of the tolerance granted under this section, any abuses of this tolerance, and any suggested revisions to this section by that Department on or before May 1, 1998.

(i) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 16, effective July 16, 1994.

(j) Repealed by Session Laws 1987, c. 392.

(k) From September 1 through March 1 of each year, a vehicle which is equipped with a self-loading bed and which is designed and used exclusively to transport compressed seed cotton from the farm to a cotton gin may operate on the highways of the State, except interstate highways, with a tandem-axle weight not exceeding 44,000 pounds. Such vehicles shall be exempt from light-traffic road limitations only from point of origin on the light-traffic road to the nearest State-maintained road which is not posted to prohibit the transportation of statutory load limits. This exemption does not apply to restricted, posted bridge structures. (1937, c. 407, s. 82; 1943, c. 213, s. 2; cc. 726, 784; 1945, c. 242, s. 2; c. 569, s. 2; c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; c. 942, s. 1; c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 872; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044; 1969, c. 537; 1973, c. 507, s. 5; c. 1449, ss. 1, 2; 1975, c. 325; c. 373, s. 2; c. 716, s. 5; c. 735; c. 736, ss. 1-3; 1977, c. 461; c. 464, s. 34; 1977, 2nd Sess., c. 1178; 1981, c. 690, ss. 27, 28; c. 726; c. 1127, s. 53.1; 1983, c. 407; c. 724, s. 1; 1983 (Reg. Sess., 1984), c. 1116, ss. 105-109; 1985, c. 54; c. 274; 1987, c. 392; c. 707, ss. 1-4; 1991, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 905, s. 1; 1993, c. 426, ss. 1, 2; c. 470, s. 1; c. 533, s. 11; 1993 (Reg. Sess., 1994), c. 761, ss. 10-16; 1995, c. 109, s. 3; c. 163, s. 4; c. 332, ss. 1-3 ; c. 509, s. 135.1(b); 1995 (Reg. Sess., 1996), c. 756, s. 29; 1997-354, s. 1; 1997-373, s. 1; 1997-466, s. 2.)

Editor's Note. —

The second Editor's note under this section in the main pamphlet may be disregarded.

Session Laws 1995, c. 332, s. 4, effective June 27, 1995, repealed Session Laws 1995, c. 109, s. 3, effective October 1, 1995, which would have amended subdivision (e)(3) by inserting "or (b)(4)" following "subdivision (b)(3)."

Session Laws 1995, c. 509, s. 135.1(b) corrected the introductory language of Session Laws 1995, c. 163, s. 4.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added double asterisks following "62000", "62500", "63500", "64000", "64500", and "65500" in the "4 Axles" column of the table in subdivision (b)(3).

Session Laws 1997-354, s. 1, effective August 1, 1997, in subdivision (c)(12), substituted "(i)" for "meets one of the following descriptions", inserted the (ii) and (iii) designations, inserted "or posted bridge", substituted "and meets one of the following descriptions" for "and does not exceed its registered weight"; and substituted "90,000" for "88,000" in subdivision (c)(12)a.

Session Laws 1997-373, s. 1, effective August 6, 1997, substituted "either one of the two nearest highways" for "the nearest highway" in subdivision (c)(5).

Session Laws 1997-466, s. 2, effective October 1, 1997, in subdivision (c)(5), inserted "transported" in subdivisions a., e. and f.; substituted "transported" for "originating" in subdivision b.; in subdivision c. deleted "Unprocessed" preceding "Forest", and inserted "and transported" following "originating", and "without interruption or delay for further packaging or processing after initiating transport"; and added subdivision h.

§ 20-118.1. Officers may weigh vehicles and require overloads to be removed.

A law enforcement officer may stop and weigh a vehicle to determine if the vehicle's weight is in compliance with the vehicle's declared gross weight and the weight limits set in this Part. The officer may require the driver of the vehicle to drive to a scale located within five miles of where the officer stopped the vehicle.

If the vehicle's weight exceeds the amount allowable, the officer may detain the vehicle until the overload has been removed. Any property removed from a vehicle because the vehicle was overloaded is the responsibility of the owner or operator of the vehicle. The State is not liable for damage to or loss of the removed property.

Failure to permit a vehicle to be weighed or to remove an overload is a misdemeanor of the Class set in G.S. 20-176. An officer must weigh a vehicle with a scale that has been approved by the Department of Agriculture and Consumer Services. (1927, c. 148, s. 37; 1949, c. 1207, s. 3; 1951, c. 1013, s. 4; 1979, c. 436, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1259, s. 2; 1993, c. 539, s. 356; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 109, s. 4; 1997-261, s. 109.)

Editor's Note. — Session Laws 1993, c. 539, s. 356, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 20-119. Weight of vehicles and load.

Editor's Note. — Session Laws 1993, c. 539, s. 357, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1997-373, s. 2, provides: "The Department of Transportation may adopt a rule authorizing issuance of special weight permits for vehicles transporting wood residuals on non-interstate highways, as authorized by existing State law, G.S. 20-119."

Session Laws 1997-373, s. 3, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Department may adopt the rule authorized by Section 2 of this act as a temporary rule no later than September 1, 1997."

§ 20-120. Operation of flat trucks on State highways regulated; trucks hauling leaf tobacco in barrels or hogsheads.

Editor's Note. — Session Laws 1993, c. 539, s. 358, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-123. Trailers and towed vehicles.

(a) The limitations in G.S. 20-116 on combination vehicles do not prohibit the towing of farm trailers not exceeding three in number nor exceeding a total length of 50 feet during the period from one-half hour before sunrise until one-half hour after sunset when a red flag of at least 12 inches square is prominently displayed on the last vehicle. The towing of farm trailers and equipment allowed by this subsection does not apply to interstate or federal numbered highways.

(b) No trailer or semitrailer or other towed vehicle shall be operated over the highways of the State unless such trailer or semitrailer or other towed vehicle be firmly attached to the rear of the towing unit, and unless so equipped that it will not snake, but will travel in the path of the vehicle drawing such trailer or semitrailer or other towed vehicle, which equipment shall at all times be kept in good condition.

(c) In addition to the requirements of subsections (a) and (b) of this section, the towed vehicle shall be attached to the towing unit by means of safety chains or cables which shall be of sufficient strength to hold the gross weight of the towed vehicle in the event the primary towing device fails or becomes disconnected while being operated on the highways of this State if the primary towing attachment is a ball hitch. Trailers and semitrailers having locking pins or bolts in the towing attachment to prevent disconnection, and the locking pins or bolts are of sufficient strength and condition to hold the gross weight of the towed vehicle, need not be equipped with safety chains or cables unless their operation is subject to the requirements of the Federal Motor Carrier Safety Regulations.

Semitrailers in combinations of vehicles that are equipped with fifth wheel assemblies that include locking devices need not be equipped with safety chains or cables. (1937, c. 407, s. 86; 1955, c. 296, s. 3; 1963, c. 356, s. 2; c. 1027, s. 2; 1965, c. 966; 1971, c. 639; 1973, c. 507, s. 5; 1975, c. 716, s. 5; 1977, c. 464, s. 34; 1981 (Reg. Sess., 1982), c. 1195; 1993, c. 71, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 15; 1997-148, s. 8.)

Editor's Note. — The introductory language of Session Laws 1997-148, s. 8, states "G.S. 20-123(57) reads as rewritten"; however, G.S. 20-123 does not contain a subdivision (57), and it appears that the amendment was intended for G.S. 120-123(57). Therefore, the amendment was not given effect under this section.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote subsection (a).

§ 20-124. Brakes.

Editor's Note. — Session Laws 1993, c. 539, s. 359, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

§ 20-125. Horns and warning devices.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, and it shall be unlawful, except as otherwise provided in this section, for any vehicle to be equipped with or for any person to use upon a vehicle any siren, compression or spark plug whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonable loud or harsh sound by means of a horn or other warning device. All such horns and warning devices shall be maintained in good working order and shall conform to regulation not inconsistent with this section to be promulgated by the Commissioner.

(b) Every vehicle owned and operated by a police department or by the Department of Crime Control and Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries and used exclusively for law enforcement purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization.

(c) Repealed by Session Laws 1979, c. 653, s. 2. (1937, c. 407, s. 88; 1951, cc. 392, 1161; 1955, c. 1224; 1959, c. 166, s. 1; c. 494; c. 1170, s. 1; c. 1209; 1965, c. 257; 1975, c. 588; c. 734, s. 15; 1977, c. 52, s. 1; c. 438, s. 1; 1979, c. 653, s. 2; 1981, c. 964, s. 19; 1983, c. 32, s. 2; c. 768, s. 5; 1987, c. 266; 1989, c. 537; 1989 (Reg. Sess., 1990), c. 1020, s. 1; 1993 (Reg. Sess., 1994), c. 719, s. 2.)

§ 20-125.1. Directional signals.

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All farm trailers must be equipped with a stop lamp activated by the foot brake of the towing unit when operated upon the highways of this State. Additional lights or reflectors required depend on the time of day of operation, the atmospheric and weather conditions, the gross weight of the trailer and whether or not the trailer and load obscure the directional signals or stop light of the towing vehicle. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

§ 20-127. Windows and windshield wipers.

(a) Windshield Wipers. — A vehicle that is operated on a highway and has a windshield must have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper must be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers must be in good working order.

(b) Window Tinting Restrictions. — A window of a vehicle that is operated on a highway or a public vehicular area must comply with this subsection. The windshield of the vehicle may be tinted only along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. Any other window of the vehicle may be tinted in accordance with the following restrictions:

(1) The total light transmission of the tinted window must be at least thirty-five percent (35%). A vehicle window that, by use of a light meter approved by the Commissioner, measures a total light transmission of more than thirty-two percent (32%) is conclusively presumed to meet this restriction.

(2) The light reflectance of the tinted window must be twenty percent (20%) or less.

(3) Tinted film or another material used to tint the window must be nonreflective and must be a color other than red, yellow, or amber.

(c) Tinting Exceptions. — The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

(1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.

(2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.

(3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.

(4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.

(5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.

(6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).

(7) A window of a limousine.

(8) A window of a law enforcement vehicle.

(9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.

(10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.

(d) Violations. — A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

(1) Applies tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in this section.

(2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section.

(e) Defense. — It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge and the window now meets the window tinting restrictions. To assert this defense, the person charged must produce in court, or submit to the prosecuting attorney before trial, a certificate from the Division of Motor Vehicles or the Highway Patrol showing that the window complies with the restrictions. (1937, c. 407, s. 90; 1953, c. 1254; 1955, c. 1157, s. 2; 1959, c. 1264, s. 7; 1967, c. 1077; 1985, c. 789; 1985 (Reg. Sess., 1986), c. 997; 1987, c. 567; 1987 (Reg. Sess., 1988), c. 1082, ss. 7-8.1; 1989, c. 770, s. 66; 1991 (Reg. Sess., 1992), c. 1007, s. 34; 1993, c. 539, s. 360; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 683, s. 1; c. 754, s. 4; 1995, c. 14, s. 1; c. 473, s. 1.)

Editor's Note. —

Session Laws 1993, c. 539, s. 360, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

The designations of subsections (d) and (e) were assigned by the Revisor of Statutes, as the amendment by Session Laws 1995, c. 473, s. 1, contained two subsection (c)'s.

Session Laws 1993 (Reg. Sess., 1994), c. 683, s. 1, rewrote former subsections (c) through (i) and added former subsections (j) and (k).

Session Laws 1995, c. 14, s. 1, effective March 15, 1995, changed the effective date of amendments by Session Laws 1993 (Reg. Sess., 1994), c. 683, s. 1, from March 1, 1995 to November 1, 1995. Subsequently, this section was rewritten by Session Laws 1995, c. 473, s. 1, effective November 1, 1995.

§ 20-128. Prevention of noise, smoke, etc.; muffler cut-outs regulated.

(a) No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler, or other exhaust system of the type installed at the time of manufacture, in good working order and in constant operation to prevent excessive or unusual noise, annoying smoke and smoke screens.

(b) It shall be unlawful to use a "muffler cut-out" on any motor vehicle upon a highway.

(c) No motor vehicle registered in this State which was manufactured after model year 1967 shall be operated in this State unless it is equipped with such emission-control devices to reduce air pollution as were installed at the time of manufacture, provided the foregoing requirement shall not apply where such devices have been removed for the purpose of converting the motor vehicle to operate on natural or liquefied petroleum gas or other modifications have been made in order to reduce air pollution, further provided that such modifications shall have first been approved by the Department of Environment and Natural Resources. (1937, c. 407, s. 91;

1971, c. 455, s. 1; 1983, c. 132; 1989, c. 727, s. 9; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 20-128.2. Motor vehicle emission standards.

(a) The rules and regulations promulgated pursuant to G.S. 143-215.107(a)(6) shall be implemented when the Environmental Management Commission certifies to the Commissioner of Motor Vehicles that the ambient air quality in an area will be improved by the implementation of a motor vehicle inspection/maintenance program within a specified county or group of counties, as necessary to effect attainment or preclude violations of the National Ambient Air Quality Standards for carbon monoxide or ozone; provided the Environmental Management Commission may prescribe different vehicle emission limits for different areas as may be necessary and appropriate to meet the stated purposes of this section.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 5, effective October 1, 1994. (1979, 2nd Sess., c. 1180, s. 2; 1989, c. 391, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 5.)

Editor's Note. —

Session Laws 1997-483, s. 9.1, effective July 1, 1997, provides: "The Environmental Management Commission and the Division of Air Quality of the Department of Environment, Health, and Natural Resources, with the assistance and cooperation of the Division of Motor Vehicles of the Department of Transportation, shall study whether the emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes should be expanded to include all metropolitan counties. The study shall evaluate the costs and benefits of expanding the program, including the benefits resulting from a reduction in the likelihood that those counties will not meet the national ambient air quality standards for ozone and carbon monoxide in the future, thereby incurring the restrictions on industries, power plants, vehicles, and other activities that apply to nonattainment counties. Beginning 1 January 1998, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the matters to be evaluated pursuant to this section to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b)."

Session Laws 1997-483, s. 9.2, effective July 1, 1997, provides: "The Environmental Management Commission, the Division of Air Quality of the Department of Environment, Health, and Natural Resources, and the Division of Motor Vehicles of the Department of Transportation shall take appropriate steps to ensure that the current emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes is effectively implemented and enforced. Beginning 1 October 1997, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the implementation and enforcement of the emissions inspection and maintenance program to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b). The Division of Motor Vehicles shall report on its progress in meeting the requirements of this section to the Environmental Review Commission on a quarterly basis beginning 1 October 1997."

Session Laws 1997-483, s. 1, provides: "This act shall be known as 'The Studies Act of 1997'."

§ 20-129. Required lighting equipment of vehicles.

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All farm trailers must be equipped with a stop lamp activated by the foot brake of the towing unit when operated upon the highways of this State. Additional lights or reflectors required depend on the time of day of operation, the atmospheric and weather conditions, the gross weight of the trailer and whether or not the trailer and load obscure the directional signals or stop light of the towing vehicle. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police car;
(2) A highway patrol car;
(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;
(4) An ambulance;
(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for transplantation;
(6) A fire-fighting vehicle;
(7) A school bus;
(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;
(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;
(10) A vehicle operated by medical doctors or anesthetists in emergencies;
(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;
(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle;

(13) A light required by the Federal Highway Administration;

(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation;

(15) A vehicle operated by an emergency medical service as an emergency support vehicle; and

(16) A State emergency management vehicle.

(c) It is unlawful for any person to install or activate or operate a blue light in or on any vehicle in this State. It is unlawful for any person to possess a blue light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "blue light" means an operable blue light not sealed in the manufacturer's original package which:

(1) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and

(2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

(d) The provisions of subsection (c) of this section do not apply to a publicly owned vehicle used primarily for law-enforcement purposes or any other vehicle used primarily by law-enforcement officers in the performance of their official duties.

(e) Violation of subsection (a) or (c) of this section is a Class 1 misdemeanor. (1943, c. 726; 1947, c. 1032; 1953, c. 354; 1955, c. 528; 1957, c. 65, s. 11; 1959, c. 166, s. 2; c. 1170, s. 2; 1967, c. 651, s. 1; 1971, c. 1214; 1977, c. 52, s. 2; c. 438, s. 2; 1979, c. 653, s. 1; c. 887; 1983, c. 32, s. 1; c. 768, s. 6; 1985 (Reg. Sess., 1986), c. 1027, s. 50; 1989, c. 537, s. 2; 1989 (Reg. Sess., 1990), c. 1020, s. 2; 1991, c. 263, s. 1; 1993, c. 539, s. 361; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 719, s. 1; 1995, c. 168, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 16.)

Editor's Note. — Session Laws 1993, c. 539, s. 361, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote subdivision (b)(13).

§ 20-132. Acetylene lights.

Motor vehicles eligible for a Historic Vehicle Owner special registration plate under G.S. 20-79.4 may be equipped with two acetylene headlamps of approximately equal candlepower when equipped with clear plane-glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners not more and not less and which do not project a glaring or dazzling light into the eyes of approaching drivers. (1937, c. 407, s. 95; 1995, c. 379, s. 18.1.)

Editor's Note. — Session Laws 1995, c. 379, s. 18.1, which amended this section, was effective July 6, 1995, but did not affect pending litigation.

§ 20-134. Lights on parked vehicles.

(a) Whenever a vehicle is parked or stopped upon a highway, whether attended or unattended during the times mentioned in G.S. 20-129, there shall be displayed upon such vehicle one or more lamps projecting a white or amber light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, and projecting a red light visible under like conditions from a distance of 500 feet to the rear, except that local authorities may provide by ordinance that no lights need be displayed upon any such vehicle when parked in accordance with local ordinances upon a highway where there is sufficient light to reveal any person within a distance of 200 feet upon such highway.

(b) A motor vehicle operated on a highway by a rural letter carrier or by a newspaper delivery person shall be equipped and operated with flashing amber lights at any time the vehicle is being used in the delivery of mail or newspapers, regardless of whether the vehicle is attended or unattended. (1937, c. 407, s. 97; 1959, c. 1264, s. 9; 1995 (Reg. Sess., 1996), c. 715, s. 1.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, and applicable to offenses occurring on or after that date, added the subsection (a) designation, and added subsection (b).

§ 20-135.1: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 30, effective June 21, 1996.

§ 20-135.2A. Seat belt use mandatory.

(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 must have such a safety belt properly fastened about his or her body at all times when the vehicle is in forward motion on a street or highway in this State. Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (i) under 16 years of age and (ii) not required to be restrained in accordance with G.S. 20-137.1, must have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S. 20-11 and G.S. 20-137.1 must be secured as required by those sections.

(b) "Passenger Motor Vehicle," as used in this section, means a motor vehicle with motive power designed for carrying 10 passengers or fewer, but does not include a motorcycle, a motorized pedacycle or a trailer.

(c) This section shall not apply to any of the following:

(1) A driver or occupant with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints;

(2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route;

(3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour;

(4) Any vehicle registered and licensed as a property-carrying vehicle in accordance with G.S. 20-88, while being used for agricultural or commercial purposes; or

(5) A motor vehicle not required to be equipped with seat safety belts under federal law.

(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section or as justification for the stop of a vehicle or detention of a vehicle operator and passengers.

(e) Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(f) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.

(g) The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this section as an important means of reducing the severity of injury to the users of restraint devices and on the requirements and penalties specified in this law.

(h) The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this section and shall include a report of findings in its report on highway safety no later than October 1, 1988. (1985, c. 222, s. 1; 1987, c. 623; 1991, c. 448, s. 1; 1994, Ex. Sess., c. 5, s. 1; 1997-16, s. 2.)

Editor's Note. —

Session Laws 1994, Extra Session, c. 5, s. 1, which amended this section, was effective March 3, 1994, and applicable to any trial, action, or proceeding commenced on or after that date.

Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that this act becomes effective December 1, 1997.

Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, in subsection (a) substituted "must" for "shall" twice, inserted "or her" preceding "body", substituted "(i)" for "(1)", "(ii)" for "(2), "G.S. 20-11 and G.S.20-137.1 must" for "G.S. 20-137.1 shall", and "those sections" for "that section". See editor's note for applicability.

CASE NOTES

Infants. — Evidence that an infant killed in a car accident was improperly sitting on the lap of, and within the seat belt of, the occupant of the front passenger's seat was not admissible in a personal injury and wrongful death action arising out of the accident. Chaney v. Young, 122 N.C. App. 260, 468 S.E.2d 837 (1996).

This section precludes the introduction of any evidence regarding seat belt use, etc. —

The evidence of the failure of the defendant to use her seat belt was not admissible in a DWI trial. State v. Williams, 113 N.C. App. 686, 440 S.E.2d 324 (1994).

Non-use of Seat Belts Probable Cause. — Officer had probable cause to stop vehicle in which defendant was a passenger where officer observed that neither the driver or the defendant passenger were wearing seat belts. Likewise, the officer was allowed to ask defendant passenger to exit the vehicle. State v. Hamilton, 125 N.C. App. 396, 481 S.E.2d 98 (1997).

In the 1987 amendment to subsection (d) not only did the General Assembly retain the exclusion of the seat belt defense in civil cases, but expanded the act so as to exclude evidence of the failure to have a fastened seat belt in place in other criminal proceedings. State v. Williams, 113 N.C. App. 686, 440 S.E.2d 324 (1994).

§ 20-135.2B. Transporting children under 12 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.

(a) The operator of a vehicle having an open bed or open cargo area shall insure that no child under 12 years of age is transported in the bed or cargo area of that vehicle. An open bed or open cargo area is a bed or cargo area without permanent overhead restraining construction.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) An adult is present in the bed or cargo area of the vehicle and is supervising the child.
(2) The child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208, installed to support a load strength of not less than 5,000 pounds for each belt, and of a type approved by the Commissioner.
(3) An emergency situation exists.
(4) The vehicle is being operated in a parade pursuant to a valid permit.
(5) The vehicle is being operated in an agricultural enterprise.
(6) The vehicle is being operated in a county that has no incorporated area with a population in excess of 3,500.

(c) Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section. (1993 (Reg. Sess., 1994), c. 672, s. 1; 1995, c. 163, s. 7.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 672, s. 4, made this section effective January 1, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 672, which added this section, in s. 2 provides: "The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designated to encourage compliance with this act and to inform the public on the requirements and penalties specified in this law."

Session Laws 1993 (Reg. Sess., 1994), c. 672, which added this section, in s. 3 provides: "The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this act and shall include a report of findings in its report on highway safety no later than January 1, 1998."

§ 20-136. Smoke screens.

Editor's Note. — Session Laws 1993, c. 539, s. 1257, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-137: Repealed by Session Laws 1995, c. 379, s. 18.2, effective July 1, 1995.

§ 20-137.1. Child restraint systems required.

(a) Every driver who is transporting a child of less than 12 years of age shall have the child properly secured in a child passenger restraint system (car safety seat) which meets federal standards applicable at the time of its manufacture. The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.

(b) The provisions of this section shall not apply: (i) to ambulances or other emergency vehicles; (ii) when the child's personal needs are being attended to; (iii) if all seating positions equipped with child passenger restraint systems or seat belts are occupied; or (iv) to vehicles which are not required by federal law or regulation to be equipped with seat belts.

(c) Any person convicted of violating this section may be punished by a fine not to exceed twenty-five dollars ($25.00). No driver charged under this section for failure to have a child under four years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system.

(d) No driver license points or insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence. (1981, c. 804, ss. 1, 4, 5; 1985, c. 218; 1993 (Reg. Sess., 1994), c. 748, s. 1.)

CASE NOTES

Improper Restraint. — Evidence that an infant killed in a car accident was improperly sitting on the lap of, and within the seat belt of, the occupant of the front passenger's seat was not admissible in a personal injury and wrongful death action arising out of the accident. Chaney v. Young, 122 N.C. App. 260, 468 S.E.2d 837 (1996).

§ 20-137.2. Operation of vehicles resembling law-enforcement vehicles unlawful; punishment.

Editor's Note. — Session Laws 1993, c. 539, s. 362, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 10. Operation of Vehicles and Rules of the Road.

§ 20-138.1. Impaired driving.

Cross References. — For definition of "alcohol concentration," see § 20-4.01(1b).

Legal Periodicals. —

For note, "North Carolina and Pretrial Civil Revocation of an Impaired Driver's License and the Double Jeopardy Clause," see 18 Campbell L. Rev. 391 (1996).

CASE NOTES

I. In General.
II. Driving Under the Influence.
V. Instructions.

I. IN GENERAL.

Constitutionality. —

Revocation of one's driver's license under § 20-16.5 and subsequent convictions of DWI under this section do not violate the prohibition against double jeopardy. State v. Rogers, 124 N.C. App. 364, 477 S.E.2d 221 (1996).

Jurisdiction of State Capital Officer. — Trial court erred by concluding that the arresting State Capitol Police officer had no jurisdiction to arrest defendant for DWI. State v. Dickerson, 125 N.C. App. 592, 481 S.E.2d 344 (1997).

Quoted in State v. Snyder, 343 N.C. 61, 468 S.E.2d 221 (1996).

Cited in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994); Camalier v. Jeffries, 113 N.C. App. 303, 438 S.E.2d 427 (1994); State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994); State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610, cert. denied, 337 N.C. 805, 449 S.E.2d 751 (1994); Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994); State v. Turner, 117 N.C. App. 457, 451 S.E.2d 19 (1994); Camalier v. Jeffries, 340 N.C. 699, 460 S.E.2d 133; State v. Crawford, 125 N.C. App. 279, 480 S.E.2d 422 (1997).

II. DRIVING UNDER THE INFLUENCE.

Evidence of Impairment Held Sufficient. —

Where trooper could have placed defendant under arrest for not carrying his driver's license, but merely choose to ask defendant to step back to the patrol car so that he could check defendant's license information and so that he could further investigate defendant's intoxication based upon defendant's unsteady movements and the smell of alcohol, and after defendant failed the field sobriety tests he was placed under arrest and advised of his rights, the seizure was constitutionally permissible and there was sufficient probable cause for arrest. State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

V. INSTRUCTIONS.

Jury instruction proper on the definition of "public vehicular area" because members of the public using car wash premises deserved no less protection from impaired drivers in the parking lot than on public streets or highways. State v. Robinette, 124 N.C. App. 212, 476 S.E.2d 387 (1996).

Instruction Held Erroneous. —

Judgment convicting defendant of driving while impaired would be vacated where magistrate judge instructed the jury that it could rely on either of two independent grounds in determining whether defendant drove his vehicle while under the influence, as the jury could not legally convict him on the second ground, i.e., that the defendant had a blood alcohol concentration of at least .10 percent, since the court had suppressed evidence of blood alcohol concentration. United States v. Harris, 27 F.3d 111 (4th Cir. 1994).

§ 20-138.2. Impaired driving in commercial vehicle.

Editor's Note. —

Session Laws 1993, c. 539, s. 363, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Legislative Intent. — Our legislature has adopted a breath alcohol per se offense as an alternative method of committing a driving while impaired offense, as it is immaterial whether the defendant is in fact impaired or whether his blood alcohol content is in excess of that permitted in the statutes. State v. Cothran, 120 N.C. App. 633, 463 S.E.2d 423 (1995).

§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.

(a) Offense. — It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. — An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(b1) Odor Insufficient. — The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. — Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. — The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

(d) Limited Driving Privilege. — A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.
(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b) (1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction. (1983, c. 435, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 11; 1993, c. 539, s. 364; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 506, s. 6; 1997-379, ss. 4, 5.2.)

Editor's Note. — Session Laws 1993, c. 539, s. 364, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1995, c. 506, s. 364, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Session Laws 1995, c. 506, s. 6, which amended this section, was effective September 15, 1995, and applicable to offenses committed on or after that date.

Session Laws 1997-379, s. 7, provides in part: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Effect of Amendments. — Session Laws 1997-379, ss. 4 and 5.2, effective December 1, 1997, and applicable to offenses committed on or after that date, added subsections (b1) and (b2); substituted "shall" for "must" in subsection (c); and in subsection (a) deleted "in his blood a" preceding "controlled substance", and substituted "body which was lawfully obtained" for "blood which was lawfully obtained."

§ 20-138.5. Habitual impaired driving.

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(b) A person convicted of violating this section shall be punished as a Class F felon and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.

(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(d) A person convicted under this section shall have his license permanently revoked.

(e) If a person is convicted under this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of impaired driving becomes property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.2. In applying the procedure set out in that statute, an owner or a holder of a security interest is considered an innocent party with respect to a motor vehicle subject to forfeiture under this subsection if any of the following applies:

(1) The owner or holder of the security interest did not know and had no reason to know that the defendant had been convicted within the previous seven years of three or more offenses involving impaired driving.

(2) The defendant drove the motor vehicle without the consent of the owner or the holder of the security interest. (1989 (Reg. Sess., 1990), c. 1039, s. 7; 1993, c. 539, s. 1258; 1994, Ex. Sess., c. 14, s. 32; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 34.1; c. 767, s. 32; 1997-379, s. 6.)

Editor's Note. —

Session Laws 1993, c. 539, s. 1258, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act [October 1, 1994] are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 14, s. 32, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses occurring on or after that date.

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 34.1, which amended this section, was effective October 1, 1994, and applicable to offenses occurring on or after that date.

Session Laws 1997-379, s. 7, provides in part: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, and applicable to offenses committed on or after that date, substituted "Class F felon and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended" for "Class G felon" in subsection (b).

Legal Periodicals. — For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

CASE NOTES

Superior Court Jurisdiction. — The offense of habitual impaired driving as defined in this section constitutes a separate substantive felony offense which is properly within the original exclusive jurisdiction of the superior court. State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610, cert. denied, 337 N.C. 805, 449 S.E.2d 751 (1994).

A conviction for habitual impaired driving may serve as the basis for enhancement to habitual felon status. State v. Baldwin, 117 N.C. App. 713, 453 S.E.2d 193 (1995).

Enhancement of Sentence. — This section did not prohibit defendant's felony sentence from being enhanced on the grounds that he was an habitual felon when elements necessary to prove that he was an habitual felon were the same as those elements which were used to support the underlying felony. State v. Misenheimer, 123 N.C. App. 156, 472 S.E.2d 191 (1996).

Quoted in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994).

Cited in State v. Jernigan, 118 N.C. App. 240, 455 S.E.2d 163 (1995).

§ 20-138.6: Reserved for future codification purposes.

§ 20-138.7. Transporting an open container of alcoholic beverage after consuming alcohol.

(a) Offense. — No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(b) Subject to Implied-Consent Law. — An offense under this section is an alcohol-related offense subject to the implied- consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. — The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. — Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. — Violation of this section shall be punished as a Class 3 misdemeanor for the first offense and shall be punished as a Class 2 misdemeanor for a second or subsequent offense. A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000). Violation of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. A violation of this section shall be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. — If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. — In any prosecution for a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

(h) Limited Driving Privilege. — A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction. (1995, c. 506, s. 9.)

Editor's Note. — Session Laws 1995, c. 506, s. 15, made this section effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued on or after that date.

Session Laws 1995, c. 506, which enacted this section, in s. 15 provides the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.

(a) Chemical Analysis Admissible. — In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. — A chemical analysis, to be valid, shall be performed in accordance with the provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing a current permit issued by the Department of Health and Human Services for that type of chemical analysis. The Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. — Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:

(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.
(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.

(b2) Breath Analysis Results Inadmissible if Preventive Maintenance Not Performed. — Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and
(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the Commission for Health Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. — By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.
(2) That the test results may only be used to prove a person's particular alcohol concentration if:
    a. The pair of readings employed are from consecutively administered tests; and
    b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's willful refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a willful refusal under G.S. 20-16.2(c).

A person's willful refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

(b4) Introducing Routine Records Kept as Part of Breath-Testing Program. — In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath-testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath-testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.

(b5) Subsequent Tests Allowed. — A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(c) Withdrawal of Blood for Chemical Analysis. — When a blood test is specified as the type of chemical analysis by the charging officer, only a physician, registered nurse, or other qualified person may withdraw the blood sample. If the person withdrawing the blood requests written confirmation of the charging officer's request for the withdrawal of blood, the officer shall furnish it before blood is withdrawn. When blood is withdrawn pursuant to a charging officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

(d) Right to Additional Test. — A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law-enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(e) Recording Results of Chemical Analysis of Breath. — The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:

(1) The alcohol concentration or concentrations revealed by the chemical analysis.
(2) The time of the collection of the breath sample or samples used in the chemical analysis.

A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.

(e1) Use of Chemical Analyst's Affidavit in District Court. — An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.
(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.
(3) The type of chemical analysis administered and the procedures followed.
(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.
(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness.

(f) Evidence of Refusal Admissible. — If any person charged with an implied-consent offense refuses to submit to a chemical analysis, evidence of that refusal is admissible in any criminal action against him for an implied-consent offense under G.S. 20-16.2.

(g) Controlled-Drinking Programs. — The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol. (1963, c. 966, s. 2; 1967, c. 123; 1969, c. 1074, s. 2; 1971, c. 619, ss. 12, 13; 1973, c. 476, s. 128; c. 1081, s. 2; c. 1331, s. 3; 1975, c. 405; 1979, 2nd Sess., c. 1089; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 26; 1983 (Reg. Sess., 1984), c. 1101, s. 20; 1989, c. 727, s. 219(2); 1991, c. 689, s. 233.1(b); 1993, c. 285, s. 7; 1997-379, ss. 5.3-5.5; 1997-443, s. 11A.10; 1997-443, s. 11A.123; 1997-456, s. 34(b).)

Editor's Note. — Session Laws 1997-379, s. 7, provides in part: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-379, ss. 5.3, 5.4 and 5.5, effective December 1, 1997, and applicable to offenses committed on or after that date, in subsection (a) inserted "or the presence of any other impairing substance in the person's body", substituted "a person's" for "a defendant's", and inserted "or results of other tests showing the presence of an impairing substance"; added subsection (b5); inserted "or the presence or absence of an impairing substance" in subdivision (e1)(1); substituted "blood, breath, or other bodily fluid or substance" for "blood or breath" in subdivision (e1)(2); and substituted "shall" for "must" in the next to last sentence of subsection (e1).

Session Laws 1997-443, s. 11A.10, effective August 28, 1997, substituted throughout this section "shall" for "must" and "Health and Human Services" for "Environment, Health, and Natural Resources"; in subsection (b), substituted "may" for "is authorized to" twice in the third sentence, and "rules" for "regulations" in the third sentence; substituted "the defendant's" for "his" in subdivision (b2)(1); substituted "analyze the defendant's" for "analyse his" in subdivision (b2)(2); in subsection (c) substituted "that person" for "him" in the last sentence; in subsection (e), substituted "the analyst" for "he" twice in subdivision (4), and in the language following subdivision (5) substituted "the person" for "he" in the last sentence; and in subsection (g) substituted "may adopt rules" for "is empowered to make regulations".

Session Laws 1997-456, s. 34(b), effective August 29, 1997, added the second sentence of subsection (b5).

CASE NOTES

I. In General.
II. Administration and Use of Breathalyzer Test.

I. IN GENERAL.

Willful Refusal Not Required. — Defendant's argument that because "willful refusal" is required before a driver's license is revoked under § 20-16.2, the requirement of a willful refusal should be read into this section was without merit. State v. Pyatt, 125 N.C. App. 147, 479 S.E.2d 218 (1997).

Subsection (f) does not require a willful refusal before evidence of a refusal is admissible and the court will not read in this additional requirement. State v. Pyatt, 125 N.C. App. 147, 479 S.E.2d 218 (1997).

Although subsection (e) requires that the chemical analyst record the results of the test and the time of collection and give a copy to the person submitting to the test, the court found there to be compliance where the defendant was given the required information on the test card printed by the machine after the test was performed. State v. Watson, 122 N.C. App. 596, 472 S.E.2d 28 (1996).

Applied in State v. Garcia-Lorenzo, 110 N.C. App. 319, 430 S.E.2d 290 (1993); State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993).

Cited in Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994); State v. Abdereazeq, 122 N.C. App. 727, 471 S.E.2d 445 (1996).

II. ADMINISTRATION AND USE OF BREATHALYZER TEST.

Expression of Test Results in Terms of Breath or Blood. — Police officer who was issued a permit to perform chemical analysis under the authority of subsection (b) of this section by the Department of Human Resources was permitted by § 20-4.01(0.2) (now 20-4.01(1b)) to express alcohol concentration in terms of 210 liters of breath, as well as 100 milliliters of blood. State v. Midgett, 78 N.C. App. 387, 337 S.E.2d 117 (1985).

Notification of Rights. — Though § 20-16.2 must be read in conjunction with this section to determine the procedures governing the administering of chemical analyses, § 20-16.2, and that statute alone, sets forth the procedures governing notification of rights pursuant to a chemical analysis. Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994).

§ 20-140. Reckless driving.

Editor's Note. — Session Laws 1993, c. 539, s. 365, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

§ 20-141. Speed restrictions.

(a) No person shall drive a vehicle on a highway or in a public vehicular area at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Except as otherwise provided in this Chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

(1) Thirty-five miles per hour inside municipal corporate limits for all vehicles.

(2) Fifty-five miles per hour outside municipal corporate limits for all vehicles except for school buses and school activity buses.

(c) Except while towing another vehicle, or when an advisory safe-speed sign indicates a slower speed, or as otherwise provided by law, it shall be unlawful to operate a passenger vehicle upon the interstate and primary highway system at less than the following speeds:

(1) Forty miles per hour in a speed zone of 55 miles per hour.

(2) Forty-five miles per hour in a speed zone of 60 miles per hour or greater.

These minimum speeds shall be effective only when appropriate signs are posted indicating the minimum speed.

(d)(1) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that any speed allowed by subsection (b) is greater than is reasonable and safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality or upon any part of a highway designated as part of the Interstate Highway System or any part of a controlled-access highway (either inside or outside the corporate limits of a municipality), the Department of Transportation shall determine and declare a reasonable and safe speed limit.

(2) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe under the conditions found to exist upon any part of a highway designated as part of the Interstate Highway System or any part of a controlled-access highway (either inside or outside the corporate limits of a municipality) the Department of Transportation shall determine and declare a reasonable and safe speed limit. A speed limit set pursuant to this subsection may not exceed 70 miles per hour.

Speed limits set pursuant to this subsection are not effective until appropriate signs giving notice thereof are erected upon the parts of the highway affected.

(e) Local authorities, in their respective jurisdictions, may authorize by ordinance higher speeds or lower speeds than those set out in subsection (b) upon all streets which are not part of the State highway system; but no speed so fixed shall authorize a speed in excess of 55 miles per hour. Speed limits set pursuant to this subsection shall be effective when appropriate signs giving notice thereof are erected upon the part of the streets affected.

(e1) Local authorities within their respective jurisdictions may authorize, by ordinance, lower speed limits than those set in subsection (b) of this section on school property. If the lower speed limit is being set on the grounds of a public school, the local school administrative unit must request or consent to the lower speed limit. If the lower speed limit is being set on the grounds of a private school, the governing body of the school must request or consent to the lower speed limit. Speed limits established pursuant to this subsection shall become effective when appropriate signs giving notice of the speed limit are erected upon affected property. A person who drives a motor vehicle on school property at a speed greater than the speed limit set and posted under this subsection is responsible for an infraction and is required to pay a penalty of not less than twenty-five dollars ($25.00).

(f) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe, or that any speed hereinbefore set forth is greater than is reasonable and safe, under the conditions found to exist upon any part of a street within the corporate limits of a municipality and which street is a part of the State highway system (except those highways designated as part of the interstate highway system or other controlled-access highway) said local authorities shall determine and declare a safe and reasonable speed limit. A speed limit set pursuant to this subsection may not exceed 55 miles per hour. Limits set pursuant to this subsection shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The Department of Transportation is authorized to raise or lower the statutory speed limit on all highways on the State highway system within municipalities which do not have a governing body to enact municipal ordinances as provided by law. The Department of Transportation shall determine a reasonable and safe speed limit in the same manner as is provided in G.S. 20-141(d)(1) and G.S. 20-141(d)(2) for changing the speed limits outside of municipalities, without action of the municipality.

(g) Whenever the Department of Transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic, the Department of Transportation or such local authority may determine and declare a minimum speed below which no person shall operate a motor vehicle except when necessary for safe operation in compliance with law. Such minimum speed limit shall be effective when appropriate signs giving notice thereof are erected on said part of the highway. Provided, such minimum speed limit shall be effective as to those highways and streets within the corporate limits of a municipality which are on the State highway system only when ordinances adopting the minimum speed limit are passed and concurred in by both the Department of Transportation and the local authorities. The provisions of this subsection shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h) No person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(i) The Department of Transportation shall have authority to designate and appropriately mark certain highways of the State as truck routes.

(j) Repealed by Session Laws 1997, c. 443, s. 19.26(b), effective December 1, 1997.

(1) Drives a vehicle on a street or highway in excess of 55 miles per hour and more than 15 miles per hour over the legal limit.

(2) Drives a vehicle in excess of 80 miles per hour.

(j1) A person who drives a vehicle on a highway at a speed that is either more than 15 miles per hour more than the speed limit established by law for the highway where the offense occurred or over 80 miles per hour is guilty of a Class 2 misdemeanor.

(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under G.S. 20-141 is responsible for an infraction of "Speeding in a Highway Work Zone" and shall be required to pay a penalty of not less than one hundred dollars ($100.00), but not more than two hundred fifty dollars ($250.00). A "highway work zone" is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted at the beginning of the highway work zone states the penalty for speeding in the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the Secretary determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition.

(k) Repealed by Session Laws 1995 (Regular Session, 1996), c. 652, s. 1, effective October 1, 1996.

(*l*) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, including municipal charters, any speed limit on any portion of the public highways within the jurisdiction of this State shall be uniformly applicable to all types of motor vehicles using such portion of the highway, if on November 1, 1973, such portion of the highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. Provided, however, that a lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. The requirement for a uniform speed limit hereunder shall not apply to any portion of the highway during such time as the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of the highway.

(m) The fact that the speed of a vehicle is lower than the foregoing limits shall not relieve the operator of a vehicle from the duty to decrease speed as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway, and to avoid injury to any person or property.

(n) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, the failure of a motorist to stop his vehicle within the radius of its headlights or the range of his vision shall not be held negligence per se or contributory negligence per se. (1937, c. 297, s. 2; c. 407, s. 103; 1939, c. 275; 1941, c. 347; 1947, c. 1067, s. 17; 1949, c. 947, s. 1; 1953, c. 1145; 1955, c. 398; c. 555, ss. 1, 2; c. 1042; 1957, c. 65, s. 11; c. 214; 1959, c. 640; c. 1264, s. 10; 1961, cc. 99, 1147; 1963, cc. 134, 456, 949; 1967, c. 106; 1971, c. 79, ss. 1-3; 1973, c. 507, s. 5; c. 1330, s. 7; 1975, c. 225; 1977, c. 367; c. 464, s. 34; c. 470; 1983, c. 131; 1985, c. 764, ss. 29, 30; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 164; 1991 (Reg. Sess., 1992), c. 818, s. 1; c. 1034, s. 1; 1993, c. 539, ss. 366, 367; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 652, s. 1; 1997-341, s. 1; 1997-443, s. 19.26(b); 1997-488, s. 1.)

Editor's Note. —

Session Laws 1993, c. 539, ss. 366 and 367 which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, deleted "except on rural Interstate Highways where the speed limit has been raised pursuant to G.S. 20-141(d)(2), and" following "limits for all vehicles" in subdivision (b)(2); in subsection (d), substituted "any part of a" for "other" in subdivisions (d)(1) and (d)(2), and deleted the last sentence from subdivision (d)(2), which read "The Department of Transportation shall set the speed limit not to exceed that allowed by applicable Federal law on any part of the Interstate Highway System that they deem to be safe"; rewrote subsection (j); inserted " either" and "or over 80 miles per hour" in subsection (j1); and deleted subsection (k), which read "The maximum speed limit on any public highway within the State of North Carolina shall not exceed 55 miles per hour except for those portions of the Interstate Highway System where the Department of Transportation sets a higher speed limit pursuant to subdivision (d)(2) of this section."

Session Laws 1997-341, s. 1, effective July 25, 1997, added subsection (e1).

Session Laws 1997-443, s. 19.26(b), effective December 1, 1997, and applicable to offenses committed on or after that date, deleted subsection (j), regarding certain driving offenses while fleeing or attempting to elude arrest.

Session Laws 1997-488, s. 1, effective October 1, 1997, and applicable to violations which occur on or after that date, inserted "of 'Speeding in a Highway Work Zone'" in the first sentence of subsection (j2), substituted "shall be" for "is" and "not less than one hundred dollars ($100.00), but not more than two hundred fifty dollars ($250.00)" for "one hundred dollars ($100.00)" in that sentence, and added the last sentence of that subsection.

CASE NOTES

I. In General.
IV. Instructions.

I. IN GENERAL.

Cited in Moreau v. Hill, 111 N.C. App. 679, 433 S.E.2d 10 (1993); Sparks v. Gilley Trucking Co., Inc., 992 F.2d 50 (4th Cir. 1993); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994); Jones v. Rochelle, 125 N.C. App. 82, 479 S.E.2d 231 (1996).

IV. INSTRUCTIONS.

Instruction on Duty to Decrease Speed. —

The trial court erred by refusing to instruct the jury that defendant had a duty to decrease her speed. Welling v. Walker, 117 N.C. App. 445, 451 S.E.2d 329 (1994), cert. dismissed as improvidently granted, 342 N.C. 411, 464 S.E.2d 43 (1995).

§ 20-141.1. Speed limits in school zones.

The Board of Transportation or local authorities within their respective jurisdictions may, by ordinance, set speed limits lower than those designated in G.S. 20-141 for areas adjacent to or near a public, private or parochial school. Limits set pursuant to this section shall become effective when signs are erected giving notice of the school zone, the authorized speed limit, and the days and hours when the lower limit is effective, or by erecting signs giving notice of the school zone, the authorized speed limit and which indicate the days and hours the lower limit is effective by an electronic flasher operated with a time clock. Limits set pursuant to this section may be enforced only on days when school is in session, and no speed limit below 20 miles per hour may be set under the authority of this section. A person who drives a motor vehicle in a school zone at a speed greater than the speed limit set and posted under this section is responsible for an infraction and is required to pay a penalty of not less than twenty-five dollars ($25.00). (1977, c. 902, s. 2; 1979, c. 613; 1997-341, s. 1.1.)

Effect of Amendments. — The 1997 amendment, effective July 25, 1997, added the last sentence.

§ 20-141.3. Unlawful racing on streets and highways.

(a) It shall be unlawful for any person to operate a motor vehicle on a street or highway willfully in prearranged speed competition with another motor vehicle. Any person violating the provisions of this subsection shall be guilty of a Class 1 misdemeanor.

(b) It shall be unlawful for any person to operate a motor vehicle on a street or highway willfully in speed competition with another motor vehicle. Any person willfully violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

(c) It shall be unlawful for any person to authorize or knowingly permit a motor vehicle owned by him or under his control to be operated on a public street, highway, or thoroughfare in prearranged speed competition with another motor vehicle, or to place or receive any bet, wager, or other thing of value from the outcome of any prearranged speed competition on any public street, highway, or thoroughfare. Any person violating the provisions of this subsection shall be guilty of a Class 1 misdemeanor.

(d) The Commissioner of Motor Vehicles shall revoke the driver's license or privilege to drive of every person convicted of violating the provisions of subsection (a) or subsection (c) of this section, said revocation to be for three years; provided any person whose license has been revoked under this section may apply for a new license after 18 months from revocation. Upon filing of such application the Division may issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past 18 months and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Division may see fit to impose for the balance of the three-year revocation period, which period shall be computed from the date of the original revocation.

(e) The Commissioner may suspend the driver's license or privilege to drive of every person convicted of violating the provisions of subsection (b) of this section. Such suspension shall be for a period of time within the discretion of the Commissioner, but not to exceed one year.

(f) All suspensions and revocations made pursuant to the provisions of this section shall be in the same form and manner and shall be subject to all procedures as now provided for suspensions and revocations made under the provisions of Article 2 of Chapter 20 of the General Statutes.

(g) When any officer of the law discovers that any person has operated or is operating a motor vehicle willfully in prearranged speed competition with another motor vehicle on a street or highway, he shall seize the motor vehicle and deliver the same to the sheriff of the county in which such offense is committed, or the same shall be placed under said sheriff's constructive possession if delivery of actual possession is impractical, and the vehicle shall be held by the sheriff pending the trial of the person or persons arrested for operating such motor vehicle in violation of subsection (a) of this section. The sheriff shall restore the seized motor vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property, which bond shall be approved by said sheriff and shall be conditioned on the return of the motor vehicle to the custody of the sheriff on the day of trial of the person or persons accused. Upon the acquittal of the person charged with operating said motor vehicle willfully in prearranged speed competition with another motor vehicle, the sheriff shall return the motor vehicle to the owner thereof.

Notwithstanding the provisions for sale set out above, on petition by a lienholder, the court, in its discretion and upon such terms and conditions as it may prescribe, may allow reclamation of the vehicle by the lienholder. The lienholder shall file with the court an accounting of the proceeds of any subsequent sale of the vehicle and pay into the court any proceeds received in excess of the amount of the lien.

Upon conviction of the operator of said motor vehicle of a violation of subsection (a) of this section, the court shall order a sale at public auction of said motor vehicle and the officer making the sale, after deducting the expenses of keeping the motor vehicle, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise, at said hearing or in other proceeding brought for said purpose, as being bona fide, and shall pay the balance of the proceeds to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county. All liens against a motor vehicle sold under the provisions of this section shall be transferred from the motor vehicle to the proceeds of its sale. If, at the time of hearing, or other proceeding in which the matter is considered, the owner of the vehicle can establish to the satisfaction of the court that said motor vehicle was used in prearranged speed competition with another motor vehicle on a street or highway without the knowledge or consent of the owner, and that the owner had no reasonable grounds to believe that the motor vehicle would be used for such purpose, the court shall not order a sale of the vehicle but shall restore it to the owner, and the said owner shall, at his request, be entitled to a trial by jury upon such issues.

If the owner of said motor vehicle cannot be found, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if said owner shall not appear within 10 days after the last publication of the advertisement, the property shall be sold, or otherwise disposed of in the manner set forth in this section.

When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lienholders and other claimants to said vehicles as set out in this section. (1955, c. 1156; 1957, c. 1358; 1961, c. 354; 1963, c. 318; 1967, c. 446; 1969, c. 186, s. 3; 1973, c. 1330, s. 8; 1975, c. 716, s. 5; 1979, c. 667, s. 31; 1993, c. 539, ss. 368-370; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 163, ss. 8, 9.)

Editor's Note. — Session Laws 1993, c. 539, ss. 368, 370, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 1995, c. 163, ss. 8, 9, which amended this section, was effective July 1, 1995, and applicable to offenses occurring on or after that date.

§ 20-141.4. Felony and misdemeanor death by vehicle.

Editor's Note. — Session Laws 1993, c. 539, ss. 371 and 1259, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in State v. Hudson, 123 N.C. App. 336, 473 S.E.2d 415 (1996).

§ 20-141.5. Speeding to elude arrest.

(a) It shall be unlawful for any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties. Except as provided in subsection (b) of this section, violation of this section shall be a Class 1 misdemeanor.

(b) If two or more of the following aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony.

(1) Speeding in excess of 15 miles per hour over the legal speed limit.
(2) Gross imnpairment of the person's faculties while driving due to:
  a. Consumption of an impairing substance; or
  b. A blood alcohol concentration of 0.14 or more within a relevant time after the driving.
(3) Reckless driving as proscribed by G.S. 20-140.
(4) Negligent driving leading to an accident causing:
  a. Property damage in excess of one thousand dollars ($1,000); or
  b. Personal injury.
(5) Driving when the person's drivers license is revoked.
(6) Driving in excess of the posted speed limit, during the days and hours when the posted limit is in effect, on school property or in an area designated as a school zone pursuant to G.S. 20-141.1, or in a highway work zone as defined in G.S. 20-141(j2).
(7) Passing a stopped school bus as proscribed by G.S. 20-217.
(8) Driving with a child under 12 years of age in the vehicle.

(c) Whenever evidence is presented in any court or administrative hearing of the fact that a vehicle was operated in violation of this section, it shall be prima facie evidence that the vehicle was operated by the person in whose name the vehicle was registered at the time of the violation, according to the Division's records. If the vehicle is rented, then proof of that rental shall be prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation.

(d) The Division shall suspend, for up to one year, the drivers license of any person convicted of a misdemeanor under this section. The Division shall revoke, for two years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of two of the aggravating factors listed in subsection (b) of this section. The Division shall revoke, for three years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of three or more aggravating factors listed in subsection (b) of this section. In the case of a first felony conviction under this section where only two aggravating factors were present, the licensee may apply to the sentencing court for a limited driving privilege after a period of 12 months of revocation, provided the operator's license has not also been revoked or suspended under any other provision of law. A limited driving privilege issued under this subsection shall be valid for the period of revocation remaining in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b). If the person's license is revoked under any other statute, the limited driving privilege issued pursuant to this subsection is invalid.

(e) When the probable cause of the law enforcement officer is based on the prima facie evidence rule set forth in subsection (c) above, the officer shall make a reasonable effort to contact the registered owner of the vehicle prior to initiating criminal process.

(f) Each law enforcement agency shall adopt a policy applicable to the pursuit of fleeing or eluding motorists. Each policy adopted pursuant to this subsection shall specifically include factors to be considered by an officer in determining when it is advisable to break off a chase to stop and apprehend a suspect. The Attorney General shall develop a model policy or policies to be considered for use by law enforcement agencies. (1997-443, s. 19.26(a).)

Editor's Note. — Session Laws 1997-443, s. 19.26(f), made this section effective December 1, 1997, and applicable to offenses committed on or after that date.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

§ 20-145. When speed limit not applicable.

CASE NOTES

Standard of Care Applicable to Police Officers. —

The standard of care under this section is the reckless disregard of the safety of others, i.e. gross negligence, and this standard applies whether or not the pursuing officer's vehicle was in the collision. Young v. Woodall, 343 N.C. 459, 471 S.E.2d 357 (1996).

Cited in Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994).

§ 20-146. Drive on right side of highway; exceptions.

CASE NOTES

But Defendant May Show Cause of Violation Was Not Negligence. —

Decedent's initial act of negligence (being partially parked on the highway) justified the shift of defendant's vehicle to the left of the center line in the no passing zone; therefore, there was no negligence per se. Hurley v. Miller, 113 N.C. App. 658, 440 S.E.2d 286 (1994), rev'd on other grounds, 339 N.C. 601, 453 S.E.2d 861 (1995).

Applied in Tate v. Christy, 114 N.C. App. 45, 440 S.E.2d 858 (1994).

Cited in Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994); Chaney v. Young, 122 N.C. App. 260, 468 S.E.2d 837 (1996).

§ 20-148. Meeting of vehicles.

CASE NOTES

Cited in Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

§ 20-149. Overtaking a vehicle.

(a) The driver of any such vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of G.S. 20-150.1.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle while being lawfully overtaken on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

Failure to comply with this subsection:

(1) Is a Class 1 misdemeanor when the failure is the proximate cause of a collision resulting in serious bodily injury.
(2) Is a Class 2 misdemeanor when the failure is the proximate cause of a collision resulting in bodily injury or property damage.
(3) Is, in all other cases, an infraction. (1937, c. 407, s. 111; 1955, c. 913, s. 3; 1959, c. 247; 1973, c. 1330, s. 15; 1995, c. 283, s. 1.)

Effect of Amendments. — The 1995 amendment, effective December 1, 1995, in subsection (b) added "while being lawfully overtaken" in the first sentence, added the second sentence, and added subdivisions (b)(1), (b)(2) and (b)(3).

§ 20-150. Limitations on privilege of overtaking and passing.

CASE NOTES

I. In General.

I. IN GENERAL.

Violation Not Negligence Per Se — Decedent's initial act of negligence (being partially parked on the highway) justified the shift of defendant's vehicle to the left of the center line in the no passing zone; therefore, there was no negligence per se. Hurley v. Miller, 113 N.C. App. 658, 440 S.E.2d 286 (1994), rev'd on other grounds, 339 N.C. 601, 453 S.E.2d 861 (1995).

§ 20-151: Repealed by Session Laws 1995, c. 283, s. 2, effective December 1, 1995.

§ 20-153. Turning at intersections.

(a) Right Turns. — Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left Turns. — The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of that vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in the direction upon the roadway being entered.

(c) Local authorities and the Department of Transportation, in their respective jurisdictions, may modify the foregoing method of turning at intersections by clearly indicating by buttons, markers, or other direction signs within an intersection the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in a manner as so directed. (1937, c. 407, s. 115; 1955, c. 913, s. 5; 1973, c. 1330, s. 18; 1977, c. 464, s. 34; 1997-405, s. 1.)

Effect of Amendments. — The 1997 amendment, effective August 18, 1997, deleted the last sentence of subsection (b), which read "Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection", and made stylistic changes.

§ 20-157. Approach of police, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near police, fire department, or rescue squad vehicle or ambulance.

Editor's Note. — Session Laws 1993, c. 539, s. 372, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-158. Vehicle control signs and signals.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Camalier v. Jeffries, 340 N.C. 699, 460 S.E.2d 133.

§ 20-162. Parking in front of private driveway, fire hydrant, fire station, intersection of curb lines or fire lane.

Local Modification. — By virtue of Session Laws 1995, c. 169, Mecklenburg: 1981, c. 99; city of Charlotte: 1981, c. 99; town of Tarboro, 1985 (Reg. Sess., 1986), c. 905, s. 2; should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

§ 20-162.1. Prima facie rule of evidence for enforcement of parking regulations.

Local Modification. — By virtue of Session Laws 1995, c. 169, Mecklenburg: 1981, c. 99; city of Charlotte, 1981, c. 99; and by virtue of Session Laws 1995, c. 73, s. 4, town of Tarboro: 1985 (Reg. Sess., 1986), c. 905, s. 1, should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

§ 20-165: Repealed by Session Laws 1995, c. 379, s. 6, effective July 6, 1995.

§ 20-166. Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

Editor's Note. — Session Laws 1993, c. 539, ss. 373-375 and 1260, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. In General.

I. IN GENERAL.

Purpose of Section. — A plain reading of this section indicates it exists for safety purposes and imposes a duty of care upon a person whose vehicle collides with another person. Powell v. Doe, 123 N.C. App. 392, 473 S.E.2d 407 (1996).

Negligence Per Se. — Violation of this type of statute is negligence per se if new injuries, or an aggravation of original injuries, occur after the hit and run driver leaves the scene without rendering aid. Powell v. Doe, 123 N.C. App. 392, 473 S.E.2d 407 (1996).

Any negligence in failing to stop after an accident cannot be the proximate cause of the occurrence of the accident itself, or of any immediate injury or death resulting therefrom; thus, use of this section as the standard for negligence per se will only be appropriate when the evidence shows that the hit and run driver's failure to stop and render aid either exacerbated the injury, resulted in unnecessary pain and suffering, or resulted in an avoidable death. Powell v. Doe, 123 N.C. App. 392, 473 S.E.2d 407 (1996).

§ 20-166.1. Reports and investigations required in event of accident.

(a) Notice of Accident. — The driver of a vehicle involved in a reportable accident must immediately, by the quickest means of communication, notify the appropriate law enforcement agency of the accident. If the accident occurred in a city or town, the appropriate agency is the police department of the city or town. If the accident occurred outside a city or town, the appropriate agency is the State Highway Patrol or the sheriff's office or other qualified rural police of the county where the accident occurred.

(b) Insurance Verification. — When requested to do so by the Division, the driver of a vehicle involved in a reportable accident must furnish proof of financial responsibility.

(c) Parked Vehicle. — The driver of a motor vehicle that collides with another motor vehicle left parked or unattended on a highway of this State must report the collision to the owner of the parked or unattended motor vehicle. This requirement applies to an accident that is not a reportable accident as well as to one that is a reportable accident. The report may be made orally or in writing, must be made within 48 hours of the accident, and must include the following:

(1) The time, date, and place of the accident.
(2) The driver's name, address, and drivers license number.
(3) The registration plate number of the vehicle being operated by the driver at the time of the accident.

If the driver makes a written report to the owner of the parked or unattended vehicle and the report is not given to the owner at the scene of the accident, the report must be sent to the owner by certified mail, return receipt requested, and a copy of the report must be sent to the Division.

(d) Repealed by Session Laws 1995, c. 191, s. 2, effective January 1, 1996.

(e) Investigation by Officer. — The appropriate law enforcement agency must investigate a reportable accident. A law-enforcement officer who investigates a reportable accident, whether at the scene of the accident or by subsequent investigations and interviews, must make a written report of the accident within 24 hours of the accident and must forward it as required by this subsection. The report must contain information on financial responsibility for the vehicle driven by the person whom the officer identified as at fault for the accident.

If the officer writing the report is a member of the State Highway Patrol, the officer must forward the report to the Division. If the officer is not a member of the State Highway Patrol, the officer must forward the report to the local law enforcement agency for the area where the accident occurred. A local law enforcement agency that receives an accident report must forward it to the Division within 10 days after receiving the report.

When a person injured in a reportable accident dies as a result of the accident within 12 months after the accident and the death was not reported in the original report, the law enforcement officer investigating the accident must file a supplemental report that includes the death.

(f) Medical Personnel. — A county medical examiner must report to the Division the death of any person in a reportable accident and the circumstances of the accident. The medical examiner must file the report within five days after the death. A hospital must notify the medical examiner of the county in which the accident occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a reportable accident.

(g) Repealed by Session Laws 1987, c. 49.

(h) Forms. — The Division must provide forms to persons required to make reports under this section and the reports must be made on the forms provided. The forms must ask for the following information about a reportable accident:

(1) The cause of the accident.
(2) The conditions existing at the time of the accident.
(3) The persons and vehicles involved.

(i) Effect of Report. — A report of an accident made under this section by a person who is not a law enforcement officer is without prejudice, is for the use of the Division, and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of the accident. Any other report of an accident made under this section may be used in any manner as evidence, or for any other purpose, in any trial, civil or criminal, as permitted under the rules of evidence. At the demand of a court, the Division must give the court a properly executed certificate stating that a particular accident report has or has not been filed with the Division solely to prove a compliance with this section.

The reports made by persons who are not law enforcement officers or medical examiners are not public records. The reports made by law enforcement officers and medical examiners are public records and are open to inspection by the general public at all reasonable times. The Division must give a certified copy of one of these reports to a member of the general public who requests a copy and pays the fee set in G.S. 20-42.

(j) Statistics. — The Division may periodically publish statistical information on motor vehicle accidents based on information in accident reports. The Division may conduct detailed research to determine more fully the cause and control of accidents and may conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and accident prevention.

(k) Punishment. — A violation of any provision of this section is a misdemeanor of the Class set in G.S. 20-176. (1953, c. 1340, s. 2; 1955, c. 913, s. 9; 1963, c. 1249; 1965, c. 577; 1971, c. 55; c. 763, s. 1; c. 958, ss. 2, 3; 1973, c. 1133, ss. 1, 2; c. 1330, s. 29; 1975, c. 307; c. 716, s. 5; 1979, c. 667, s. 33; 1981, c. 690, s. 14; 1983, c. 229, ss. 1, 2; 1985, c. 764, s. 33; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 49; 1993, c. 539, ss. 376, 377; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 191, s. 2.)

Editor's Note. — Session Laws 1993, c. 539, ss. 376 and 377, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or`after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, rewrote this section.

§ 20-167.1. Transportation of spent nuclear fuel.

Editor's Note. — Session Laws 1993, c. 539, s. 378, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 11. Pedestrians' Rights and Duties.

§ 20-174. Crossing at other than crosswalks; walking along highway.

CASE NOTES

I. In General.

I. IN GENERAL.

Subsection (a) was inapplicable to a case involving plaintiff who was struck by defendant's truck as she crossed in front of supermarket parking lot because plaintiff was crossing a public vehicular area rather than a roadway. The trial court therefore erred by imposing on plaintiff a duty to yield the right-of-way and by allowing the jury to evaluate plaintiff's conduct using an improper standard of care. Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993).

§ 20-174.1. Standing, sitting or lying upon highways or streets prohibited.

(a) No person shall willfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic.

(b) Violation of this section is a Class 2 misdemeanor. (1965, c. 137; 1969, c. 1012; 1993 (Reg. Sess., 1994), c. 761, s. 17.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 17, which amended this section, was effective the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539.

CASE NOTES

Instruction Improper. — Plaintiff who placed himself in the road while helping a stranded motorist to push his car off the highway did not intentionally impede traffic; thus, giving a jury instruction based on this section on the issue of plaintiff's contributory negligence was error. Haas v. Clayton, 125 N.C. App. 200, 479 S.E.2d 805 (1997).

Part 12. Sentencing; Penalties.

§ 20-176. Penalty for misdemeanor or infraction.

Editor's Note. — Session Laws 1993, c. 539, s. 379, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(a) Sentencing Hearing Required. — After a conviction for impaired driving under G.S. 20-138.1, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. — At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. The judge must impose the Level One punishment under subsection (g) of this section if the judge determines that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if the judge determines that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:
  a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
  b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

  Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(d) Aggravating Factors to Be Weighed. — The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions

occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. — The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. — If the judge in the sentencing hearing determines that there are no grossly aggravating factors, he must weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he must note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level must be imposed.

(f1) Aider and Abettor Punishment. — Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. — Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge must determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. — A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. — A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. — A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Not operate a motor vehicle for a term of at least 90 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. — A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Not operate a motor vehicle for a term of 60 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. — A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
(3) Not operate a motor vehicle for a term of 30 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. — Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(*l*) Repealed by Session Laws 1989, c. 691, s. 3, effective January 1, 1990.

(m) Repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996.

(n) Time Limits for Performance of Community Service. — If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service must be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or
(2) Within 60 days, if the amount of community service required is 48 hours; or
(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. — In the sentencing hearing, the State must prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant must prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he must give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge must afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. — For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20, effective October 1, 1991.

(r) Supervised Probation Terminated. — Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or
(2) Repealed by Session Laws 1995 c. 496, s. 2.
(3) Payment of any fines, court costs, and fees; or
(4) Any combination of these conditions.

(s) Method of Serving Sentence. — The judge in his discretion may order a term of imprisonment or community service to be served on weekends, even if the sentence cannot be served in consecutive sequence.

(t) Repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996. (1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5; 1971, c. 619, s. 16; c. 1133, s. 1; 1975, c. 716, s. 5; 1977, c. 125; 1977, 2nd Sess., c. 1222, s. 1; 1979, c. 453, ss. 1, 2; c. 903, ss. 1, 2; 1981, c. 466, ss. 4-6; 1983, c. 435, s. 29; 1983 (Reg. Sess., 1984), c. 1101, ss. 21-29, 36; 1985, c. 706, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 201(d); 1987, c. 139; c. 352, s. 1; c. 797, s. 1; 1989, c. 548, ss. 1, 2; c. 691, ss. 1-3, 4.1; 1989 (Reg. Sess., 1990), c. 1031, ss. 1, 2; c. 1039, s. 6; 1991, c. 636, s. 19(b), (c); c. 726, ss. 20, 21; 1993, c. 285, s. 9; 1995, c. 191, s. 3; c. 496, ss. 2-7; c. 506, ss. 11-13; 1997-379, ss. 2.1-2.8; 1997-443, s. 19.26(c).)

Editor's Note. —

Session Laws 1995, c. 506, s. 13, effective September 15, 1995, substituted "0.13" for ".15" in the third sentence of the third paragraph of subsection (m) which was repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996. As amended, that sentence read: "An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was 0.13 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offence with five years."

Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Session Laws 1997-379, s. 7, provides in part: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 191, s. 3, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, substituted "a reportable accident" for "an accident causing property damage in excess of five hundred dollars ($500.00) or personal injury" in subdivision (d)(3).

Session Laws 1995, c. 496, ss. 2 through 7, effective January 1, 1996, and applicable to offenses occurring on or after that date, in subsections (g) and (h) rewrote the third sentences of both subsections, and deleted the last sentences, regarding the judge including in the record his reasons for not placing on probation a defendant who would otherwise be subject to the provisions of subsection (m); in subsections (i), (j) and (k), in the second paragraphs of those subsections added the first sentences, and rewrote the second sentences; and repealed subsections (m) and (t), and subdivision (r)(2), regarding substance abuse assessments.

Session Laws 1995, c. 506, ss. 11 through 13, which amended this section, were effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued on or after that date.

Session Laws 1997-379, ss. 2.1--2.8, effective December 1, 1997, and applicable to offenses committed on or after that date, rewrote subsections (g), (h), (i), (k), (k1), and (p); and in subsection (r) substituted "three conditions" for "two conditions", and added "and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program" and made related changes.

Session Laws 1997-443, s. 19.26(c), effective December 1, 1997, and applicable to offenses committed on or after that date, substituted "G.S. 20-141.5" for "G.S. 20-141(j)" in subdivision (d)(6).

CASE NOTES

Alcoholics Anonymous is not a "treatment program," it is, in fact, a support group for recovering alcoholics. State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994).

The North Carolina legislature has accorded the trial court broad discretion in subsection (k) in sentencing a person convicted of driving under the influence, subject to one important restriction regarding punishment: initially the state trial court cannot imprison the defendant more than 24 hours. This mandatory restriction in a very real sense is the maximum sentence a state trial judge can impose under subsection (k), unless the defendant later violates a condition of probation. United States v. Harris, 27 F.3d 111 (4th Cir. 1994).

The "like punishment" clause of 18 U.S.C. § 13, the federal Assimilative Crimes Act, places the same restriction on a federal court that is implementing the Assimilative Crimes Act. Thus, the federal court, like its state counterpart, cannot imprison a defendant more than 24 hours, unless he violates probation, nor can the federal court impose a fine in excess of $100. United States v. Harris, 27 F.3d 111 (4th Cir. 1994).

Applied in State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993).

§ 20-179.2: Repealed by Session Laws 1995, c. 496, s. 8, effective January 1, 1996.

§ 20-179.3. Limited driving privilege.

(a) Definition of Limited Driving Privilege. — A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:

(1) His employment.
(2) The maintenance of his household.
(3) His education.
(4) His court-ordered treatment or assessment.
(5) Community service ordered as a condition of the person's probation.
(6) Emergency medical care.

(b) Eligibility. —

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;
b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;
d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and
e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or
b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. — A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation.

(d) Application for and Scheduling of Subsequent Hearing. — The application for a limited driving privilege made at any time after the day of sentencing must be filed with the clerk in duplicate, and no hearing scheduled may be held until a reasonable time after the clerk files a copy of the application with the district attorney's office. The hearing must be scheduled before:

(1) The presiding judge at the applicant's trial if that judge is assigned to a court in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the conviction for impaired driving was imposed.

(2) The senior regular resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in superior court.

(3) The chief district court judge of the district court district as defined in G.S. 7A-133 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in district court.

If the applicant was convicted of an offense in another jurisdiction, the hearing must be scheduled before the chief district court judge of the district court district as defined in G.S. 7A-133 in which he resides. G.S. 20-16.2(e1) governs the judge before whom a hearing is scheduled if the revocation was under G.S. 20-16.2(d). The hearing may be scheduled in any county within the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be.

(e) Limited Basis for and Effect of Privilege. — A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid.

(f) Overall Provisions on Use of Privilege. — Every limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a), and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege. If the privilege is granted, driving related to emergency medical care is authorized at any time and without restriction as to routes, but all other driving must be for a purpose and done within the restrictions specified in the privilege.

(f1) Definition of "Standard Working Hours". — Under this section, "standard working hours" are 6:00 A.M. to 8:00 P.M. on Monday through Friday.

(g) Driving for Work-Related Purposes in Standard Working Hours. — In a limited driving privilege, the court may authorize driving for work-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the applicant is not required to drive for essential work-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (g2). The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(g1) Driving for Work-Related Purposes in Nonstandard Hours. — If the applicant is required to drive during nonstandard working hours for an essential work-related purpose, he must present documentation of that fact before the judge may authorize him to drive for this purpose during those hours. If the applicant is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the judge determines that it is necessary for the applicant to drive during nonstandard hours for a work-related purpose, he may authorize the applicant to drive subject to these limitations:

(1) If the applicant is required to drive to and from a specific place of work at regular times, the limited driving privilege must specify the general times and routes in which the applicant will be driving to and from work, and restrict driving to those times and routes.

(2) If the applicant is required to drive to and from work at a specific place, but is unable to specify the times at which that driving will occur, the limited driving privilege must specify the general routes in which the applicant will be driving to and from work, and restrict the driving to those general routes.

(3) If the applicant is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the applicant will be driving, and restrict driving to those times and within those boundaries.

(4) If the applicant can specify neither the times nor places in which he will be driving to and from work, or if he is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which he will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(g2) Driving for Other than Work-Related Purposes. — A limited driving privilege may not allow driving for maintenance of the household except during standard working hours, and the limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court. The limited driving privilege must authorize driving essential to the completion of any community work assignments, course of instruction at an Alcohol and Drug Education Traffic School, or substance abuse assessment or treatment, to which the applicant is ordered by the court as a condition of probation for the impaired driving conviction. If this driving will occur during nonstandard working hours, the limited driving privilege must specify the same limitations required by subsection (g1) for work-related driving during those hours, and it must include or have attached to it the name and address of the Alcohol and Drug Education Traffic School, the community service coordinator, or mental health treatment facility to which the applicant is assigned. Driving for educational purposes other than the course of instruction at an Alcohol and Drug Education Traffic School is subject to the same limitations applicable to work related driving under subsections (g) and (g1).

(g3) Ignition Interlock Allowed. — A judge may include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

(g4) The restrictions set forth in subsection (g3) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege.

(h) Other Mandatory and Permissive Conditions or Restrictions. — In all limited driving privileges the judge shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(i) Modification or Revocation of Privilege. — A judge who issues a limited driving privilege is authorized to modify or revoke the limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke a privilege in accordance with this subsection. The judge must indicate in the order of modification or revocation the reasons for the order, or he must make specific findings indicating the reason for the order and those findings must be entered in the record of the case.

(j) Effect of Violation of Restriction. — A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. — The clerk of court or the child support enforcement agency must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section, G.S. 20-16.2(e1), 20-16.1, 50-13.12, or 110-142.2, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege.

(*l*) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is

insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1983, c. 435, s. 31; 1983 (Reg. Sess., 1984), c. 1101, ss. 30-33; 1985, c. 706, s. 2; 1987, c. 869, s. 13; 1987 (Reg. Sess., 1988), c. 1037, s. 78; 1989, c. 436, s. 6; 1994, Ex. Sess., c. 20, s. 3; 1995, c. 506, ss. 1, 2; c. 538, s. 2(h); 1995 (Reg. Sess., 1996), c. 756, s. 31; 1997-379, s. 5.6.)

Editor's Note. — Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Session Laws 1994, Extra Session, c. 20, s. 3, which amended this section, was effective May 1, 1994, and applicable to offenses committed on or after that date.

Session Laws 1995, c. 506, ss. 1 and 2, which amended this section was effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date.

Session Laws 1997-379, s. 7, provides in part: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Effect of Amendments. — Session Laws 1995, c. 538, s. 2(h) effective January 1, 1996, and applicable to child support owed on or after that date, in subsection (k) inserted "or the child support enforcement agency" in the first sentence and substituted "G.S. 20-16.2(e1), 20-16.1, 50-13.12, or 110-142.2" for "G.S. 20-16.2(e1), or G.S. 20-16.1" in the second sentence.

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted "required by G.S. 20-17.6 for the restoration of a drivers license" for "specified in G.S. 20-179(m)" in subdivision (b)(1)e.

The 1997 amendment, effective December 1, 1997, and applicable to offenses committed on or after that date, in subsection (h) substituted "shall" for "must", and deleted "in his blood a" following "any alcohol or."

§ 20-179.4. Community service alternative punishment; responsibilities of the Department of Crime Control and Public Safety; fee.

(a) The Department of Crime Control and Public Safety shall conduct a community service alternative punishment program for persons sentenced under G.S. 20-179(i), (j) or (k).

(b) The Secretary of Crime Control and Public Safety shall assign at least one coordinator to each district court district as defined in G.S. 7A-133 to assure and report to the court the person's compliance with the community service sentence. The appointment of each coordinator shall be made in consultation with the chief district court judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, necessary equipment, and secretarial service for the use of each coordinator assigned to that county.

(c) A fee of one hundred dollars ($100.00) shall be paid by all persons serving a community service sentence. That fee shall be paid to the clerk of court in the county in which the person is convicted. The fee shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so.

(d) Fees collected under this section shall be deposited in the general fund.

(e) The coordinator shall report to the court in which the community service was ordered a significant violation of the terms of the probation judgment related to community service. The court shall then conduct a hearing to determine if there is a willful failure to comply. If the court determines there is a willful failure to pay the prescribed fee or to complete the work as ordered by the coordinator within the applicable time limits, the court shall revoke any limited driving privilege issued in the impaired driving case until the community service requirement has been met and in addition may take any further action authorized by Article 82 of General Statutes Chapter 15A for violation of a condition of probation. (1983, c. 761, s. 154; 1983 (Reg. Sess., 1984), c. 1101, ss. 34, 35; 1987 (Reg. Sess., 1988), c. 1037, s. 82; 1989, c. 752, s. 109; 1995, c. 496, s. 9; 1997-234, s. 1.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to offenses occurring on or after that date, in subsection (c) deleted "him" preceding "additional time" in the third sentence, in the fourth sentence substituted "beginning" for "he begins", and "the person to" for "that he", and deleted the last sentence regarding the fee for supervision of community service punishment for persons ordered to attend an Alcohol and Drug Education Traffic School.

The 1997 amendment, effective October 1, 1997, and applicable to any person hired or to any person notified of a hearing to determine if the person has willfully failed to perform community service on or after that date, substituted "shall" for "must" throughout the section; in subsection (b) deleted "and is subject to the approval of" following "in consultation with"; in subsection (e), deleted "In such cases" from the beginning of the second sentence, substituted "shall then conduct" for "must conduct", and added "until the community service requirement has been met"; and made stylistic changes.

ARTICLE 3A.

Safety and Emissions Inspection Program.

Part 1. Safe Use of Streets and Highways.

§ 20-183.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 3, effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 2, effective October 1, 1994, substituted "Safety and Emissions Inspection Program" for "Motor Vehicle Law of 1947" as the heading for Article 3A.

Part 2. Safety and Emissions Inspections of Certain Vehicles.

§ 20-183.2. Description of vehicles subject to safety or emissions inspection; definitions.

(a) Safety. — A motor vehicle is subject to a safety inspection in accordance with this Part if it meets all of the following requirements:

(1) It is subject to registration with the Division under Article 3 of this Chapter.

(2) It is not subject to inspection under 49 C.F.R. Part 396, the federal Motor Carrier Safety Regulations.

(3) It is not a trailer whose gross weight is less than 4,000 pounds or a house trailer.

(b) Emissions. — A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

(1) It is subject to registration with the Division under Article 3 of this Chapter.

(2) It is not a trailer whose gross weight is less than 4,000 pounds, a house trailer, or a motorcycle.

(3) It is a 1975 or later model.

(4) It is powered or designed so that it could be powered by gasoline.

(5) It meets any of the following descriptions:

a. It is required to be registered in an emissions county.

b. It is part of a fleet that is operated primarily in an emissions county.

c. It is offered for rent in an emissions county.

d. It is a used vehicle offered for sale by a dealer in an emissions county.

e. It is operated on a federal installation located in an emissions county and it is not a tactical military vehicle. Vehicles operated on a federal installation include those that are owned or leased by employees of the installation and are used to commute to the installation and those owned or operated by the federal agency that conducts business at the installation.

f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an emissions inspection.

(c) Definitions. — The following definitions apply in this Part:

(1) Emissions county. — A county in which the State either is required by federal law to conduct emissions testing or has agreed in its State Implementation Plan submitted to the federal Environmental Protection Agency to conduct emissions testing. The State Environmental Management Commission establishes the emissions counties pursuant to rules adopted under G.S. 143-215.107(a)(6).

(2) Federal installation. — An installation that is owned by, leased to, or otherwise regularly used as the place of business of a federal agency. (1965, c. 734, s. 1; 1967, c. 692, s. 1; 1969, c. 179, s. 2; cc. 219, 386; 1973, c. 679, s. 2; 1975, c. 683; c. 716, s. 5; 1979, c. 77; 1989, c. 467; 1991, c. 394, s. 1; c. 761, s. 7; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 163, s. 10; 1997-29, s. 12.)

Cross References. — For note regarding Session Laws 1993 (Reg. Sess., 1994) c. 754, s. 12, payment of expenditures for the 1994-95 fiscal year for the Exhaust Emission Inspection Program, see § 20-183.7.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 9 provides for ensuring motorist compliance with the emissions inspection requirements of Part 2 of Article 3A of Chapter 20 of the General Statutes by a computer matching method from the effective date of that act [July 15, 1994] until October 1, 1996.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 10 provides that the Joint Legislative Transportation Oversight Committee shall review the method by which branch agents of the Division of Motor Vehicles of the Department of Transportation are reimbursed.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 11 provides that the Division of Motor Vehicles shall study the problem of the unlawful transfer of a vehicle inspection sticker from one vehicle to another.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 13 provides that the Division of Motor Vehicles shall report to the Joint Legislative Transportation Oversight Committee on the implementation of s. 1 of Session Laws 1993 (Reg. Sess., 1994), c. 754.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 14 provides for expenditure of funds to expand efforts that encourage compliance with fuel tax laws, and for consideration of alternatives to collection of the fuel tax on diesel fuel.

Session Laws 1997-483, s. 1, provides: "This act shall be known as 'The Studies Act of 1997'."

Session Laws 1997-483, s. 9.1, effective July 1, 1997, provides: "The Environmental Management Commission and the Division of Air Quality of the Department of Environment, Health, and Natural Resources, with the assistance and cooperation of the Division of Motor Vehicles of the Department of Transportation, shall study whether the emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes should be expanded to include all metropolitan counties. The study shall evaluate the costs and benefits of expanding the program, including the benefits resulting from a reduction in the likelihood that those counties will not meet the national ambient air quality standards for ozone and carbon monoxide in the future, thereby incurring the restrictions on industries, power plants, vehicles, and other activities that apply to nonattainment counties. Beginning 1 January 1998, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the matters to be evaluated pursuant to this section to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b)."

Session Laws 1997-483, s. 9.2, effective July 1, 1997, provides: "The Environmental Management Commission, the Division of Air Quality of the Department of Environment, Health, and Natural Resources, and the Division of Motor Vehicles of the Department of Transportation shall take appropriate steps to ensure that the current emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes is effectively implemented and enforced. Beginning 1 October 1997, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the implementation and enforcement of the emissions inspection and maintenance program to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b). The Division of Motor Vehicles shall report on its progress in meeting the requirements of this section to the Environmental Review Commission on a quarterly basis beginning 1 October 1997."

Session Laws 1997-483, s. 1, provides: "This act shall be known as 'The Studies Act of 1997'."

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, rewrote subdivision (b)(5)d.

§ 20-183.3. Scope of safety inspection and emissions inspection.

(a) Safety. — A safety inspection of a motor vehicle consists of an inspection of the following equipment to determine if the vehicle has the equipment required by Part 9 of Article 3 of this Chapter and if the equipment is in a safe operating condition:

(1) Brakes, as required by G.S. 20-124.
(2) Lights, as required by G.S. 20-129 or G.S. 20-129.1.
(3) Horn, as required by G.S. 20-125(a).
(4) Steering mechanism, as required by G.S. 20-123.1.
(5) Windows and windshield wipers, as required by G.S. 20-127. To determine if a vehicle window meets the window tinting restrictions, a safety inspection mechanic must first determine, based on use of an automotive film check card or knowledge of window tinting techniques, if after-factory tint has been applied to the window. If after-factory tint has been applied, the mechanic must use a light meter approved by the Commissioner to determine if the window meets the window tinting restrictions.
(6) Directional signals, as required by G.S. 20-125.1.
(7) Tires, as required by G.S. 20-122.1.
(8) Mirrors, as required by G.S. 20-126.
(9) Exhaust system, as required by G.S. 20-128. For a vehicle that is subject to an emissions inspection in addition to a safety inspection, a visual inspection of the vehicle's emission-control devices is included in the emissions inspection rather than the safety inspection.

(b) Emissions. — An emissions inspection of a motor vehicle consists of a visual inspection of the vehicle's emission control devices to determine if the devices are present, are properly connected, and are the correct type for the vehicle and an analysis of the exhaust emissions of the vehicle to determine if the exhaust emissions meet the standards for the model year of the vehicle set by the Environmental Management Commission. To pass an emissions inspection a vehicle must pass both the visual inspection and the exhaust emissions analysis. When an emissions inspection is performed on a vehicle, a safety inspection must be performed on the vehicle as well.

(c) Reinspection After Failure. — The scope of a reinspection of a vehicle that has been repaired after failing an inspection is the same as the original inspection unless the vehicle is presented for reinspection within 30 days of failing the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was a safety inspection, the reinspection is limited to an inspection of the equipment that failed the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was an emissions inspection, the reinspection is limited to the portion of the inspection the vehicle failed and any other portion of the inspection that would be affected by repairs made to correct the failure. (1965, c. 734, s. 1; 1969, c. 378, s. 2; 1971, c. 455, s. 2; c. 478, ss. 1, 2; 1979, 2nd Sess., c. 1180, s. 3; 1981 (Reg. Sess., 1982), c. 1261, s. 1; 1989, c. 391, s. 2; 1991, c. 654, s. 2; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 473, s. 2.)

§ 20-183.4. License required to perform safety inspection; qualifications for license.

(a) License Required. — A safety inspection must be performed by one of the following methods:

(1) At a station that has a safety inspection station license issued by the Division and by a mechanic who is employed by the station and has a safety inspection mechanic license issued by the Division.

(2) At a place of business of a person who has a safety self-inspector license issued by the Division and by an individual who has a safety inspection mechanic license issued by the Division.

(b) Station Qualifications. — An applicant for a license as a safety inspection station must meet all of the following requirements:

(1) Have a place of business that has adequate facilities, space, and equipment to conduct a safety inspection. A place of business designated in a station license that has been suspended or revoked cannot be the designated place for any other license applicant during the period of the suspension or revocation, unless the Division finds that operation of the place of business as an inspection station during this period by the license applicant would not defeat the purpose of the suspension or revocation because the license applicant has no connection with the person whose license was suspended or revoked or because of another reason. A finding made by the Division under this subdivision must be set out in a written statement that includes the finding and the reason for the finding.

(2) Regularly employ at least one mechanic who has a safety inspection mechanic license.

(3) Designate the individual who will be responsible for the day-to-day operation of the station. The individual designated must be of good character and have a reputation for honesty.

(c) Mechanic Qualifications. — An applicant for a license as a safety inspection mechanic must meet all of the following requirements:

(1) Have successfully completed an eight-hour course approved by the Division that teaches students about the safety

equipment a motor vehicle is required to have to pass a safety inspection and how to conduct a safety inspection.

(2) Have a drivers license.

(3) Be of good character and have a reputation for honesty.

(d) Self-Inspector Qualifications. — An applicant for a license as a safety self-inspector must meet all of the following requirements:

(1) Operate a fleet of at least 10 vehicles that are subject to a safety inspection.

(2) Regularly employ or contract with an individual who has a safety inspection mechanic license and who will perform a safety inspection on the vehicles that are part of the self-inspector's fleet. (1965, c. 734, s. 1; 1967, c. 692, s. 2; 1975, c. 716, s. 5; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 1.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added the last two sentences of subsection (b)(1); and added subsection (b)(3).

§ 20-183.4A. License required to perform emissions inspection; qualifications for license.

(a) License Required. — An emissions inspection must be performed by one of the following methods:

(1) At a station that has an emissions inspection station license issued by the Division and by a mechanic who is employed by the station and has an emissions inspection mechanic license issued by the Division.

(2) At a place of business of a person who has an emissions self-inspector license issued by the Division and by an individual who has an emissions inspection mechanic license.

(b) Station Qualifications. — An applicant for a license as an emissions inspection station must meet all of the following requirements:

(1) Have a license as a safety inspection station.

(2) Have an emissions analyzer approved by the Environmental Management Commission.

(3) Have equipment to transfer information on emissions inspections to the Division by electronic means.

(4) Regularly employ at least one mechanic who has an emissions inspection mechanic license.

(c) Mechanic Qualifications. — An applicant for a license as an emissions inspection mechanic must meet all of the following requirements:

(1) Have a license as a safety inspection mechanic.

(2) Have successfully completed an eight-hour course approved by the Division that teaches students about the causes and effects of the air pollution problem, the purpose of the emissions inspection program, the vehicle emission standards established by the federal Environmental Protection Agency, the emission control devices on vehicles, how to conduct an emissions inspection using an emissions analyzer approved by the Environmental Management Commission, and any other topic required by 40 C.F.R. § 51.367 to be included in the course. Successful completion requires

a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle.

(d) Self-Inspector Qualifications. — An applicant for a license as an emissions self-inspector must meet all of the following requirements:

(1) Have a license as a safety self-inspector.
(2) Operate a fleet of at least 10 vehicles that are subject to an emissions inspection.
(3) Have, or have a contract with a person who has, an emissions analyzer approved by the Environmental Management Commission.
(4) Regularly employ or contract with an individual who has an emissions inspection mechanic license and who will perform an emissions inspection on the vehicles that are part of the self-inspector's fleet. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.4B. Application for license; duration of license; renewal of mechanic license.

(a) Application. — An applicant for a license issued under this Part must complete an application form provided by the Division. The application must contain the applicant's name and address and any other information needed by the Division to determine whether the applicant is qualified for the license. The Division must review an application for a license to determine if the applicant qualifies for the license. If the applicant meets the qualifications, the Division must issue the license. If the applicant does not meet the qualifications, the Division must deny the application and notify the applicant in writing of the reason for the denial.

(b) Duration of License. — A safety inspection mechanic license expires four years after the date it is issued. An emissions mechanic inspection license expires two years after the date it is issued. A safety inspection station license, an emissions inspection station license, and a self-inspector license are effective until surrendered by the license holder or suspended or revoked by the Division.

(c) Renewal of Mechanic License. — A safety or an emissions inspection mechanic may apply to renew a license by filing an application with the Division on a form provided by the Division. To renew an emissions inspection mechanic license, an applicant must have successfully completed a four-hour emissions refresher course approved by the Division within nine months of applying for renewal. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.4C. When a vehicle must be inspected; one-way trip permit.

(a) Inspection. — A vehicle that is subject to a safety inspection, an emissions inspection, or both must be inspected as follows:

(1) A new vehicle must be inspected before it is sold at retail in this State.

(2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer at a location other than a public auction.

(3) A used vehicle that is offered for sale at retail in this State by a dealer at a public auction must be inspected before it is offered for sale unless it has an inspection sticker that was put on the vehicle under this Part and does not expire until at least nine months after the date the vehicle is offered for sale at auction.

(4) A used vehicle acquired by a resident of this State from a person outside the State must be inspected within 10 days after the vehicle is registered with the Division.

(5) A vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected within 10 days after the vehicle is registered with the Division.

(6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the inspection sticker on the vehicle expires, unless another subdivision of this section requires it to be inspected sooner.

(b) Permit. — The Division may issue a one-way trip permit to a person that authorizes the person to drive to an inspection station a vehicle whose inspection sticker has expired. The permit must describe the vehicle whose inspection sticker has expired. The permit authorizes the person to drive the described vehicle only from the place the vehicle is parked to an inspection station.

The Division may issue a 10-day temporary permit to a person that authorizes the person to drive a vehicle that failed to pass either the safety inspection or emissions inspection. The permit must describe the vehicle that failed to pass inspection and the date that it failed to pass inspection. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added "one-way trip permit" to the end of the section heading, added the subsection (a) designation, in the beginning of subsection (a) added "Inspection"; in subdivision (a)(1) substituted "sold" for "offered for sale"; and added subsection (b).

§ 20-183.4D. Procedure when a vehicle is inspected.

(a) Receipt. — When a safety inspection mechanic or an emissions inspection mechanic inspects a vehicle, the mechanic must give the person who brought the vehicle in for inspection an inspection receipt. The inspection receipt must state the date of the inspection, identify the mechanic performing the inspection, identify the station or self-inspector where the inspection was performed, and list the components of the inspection performed and indicate for each component whether the vehicle passed or failed. A vehicle that fails a component of an inspection may be repaired at any repair facility chosen by the owner or operator of the vehicle.

(b) Sticker. — When a vehicle that is subject to a safety inspection only passes the safety inspection, the safety inspection mechanic who performed the inspection must put an inspection sticker on the windshield of the vehicle at the place designated by the Division. When a vehicle that is subject to both a safety inspection and an emissions inspection passes both inspections or passes the safety inspection and has a waiver for the emissions inspection, the emissions mechanic performing the inspection must put an inspection sticker on the windshield of the vehicle at the place designated by the Division.

(c) Content of Sticker. — An inspection sticker issued for a vehicle that is subject to a safety inspection only must be a different color from an inspection sticker issued for a vehicle that is subject to both a safety and an emissions inspection. An inspection sticker must indicate when it expires, must be printed with a unique serial number and an official program seal, and must be counterfeit resistant. The side of an inspection sticker that is readable from the interior of a vehicle must contain the following information:

(1) The date the inspection was performed.
(2) The odometer reading when the inspection was performed.
(3) The signature, initials, or other identification of the mechanic who performed the inspection and put the sticker on the windshield.

(d) When Sticker Expires. — An inspection sticker put on a vehicle that did not have an inspection sticker issued under this Part when it was brought in for inspection expires at midnight on the last day of the twelfth month after the month the inspection sticker is put on the vehicle. An inspection sticker put on a vehicle that had an inspection sticker that was put on under this Part when it was brought in for inspection expires as follows:

(1) If the expiration date of the inspection sticker the vehicle had when it was brought in for inspection is less than 12 full months from the date of the inspection, the inspection sticker expires at midnight on the last day of the twelfth month after the month the inspection sticker is put on the vehicle.
(2) If the expiration date of the inspection sticker the vehicle had when it was brought in for inspection is 12 or more months from the date of the inspection, the inspection sticker expires one year after the expiration date of the inspection sticker the vehicle had when it was brought in for inspection, regardless of whether there are 12 months in this period. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.5. When a vehicle that fails an emissions inspection may obtain a waiver from the inspection requirement.

(a) Requirements. — The Division may issue a waiver for a vehicle that meets all of the following requirements:

(1) Fails an emissions inspection because it passes the visual inspection part of the inspection but fails the exhaust emissions analysis part of the inspection.

(2) Has documented repairs costing at least the waiver amount made to the vehicle to correct the cause of the failure. The waiver amount is seventy-five dollars ($75.00) if the vehicle is a pre-1981 model and is two hundred dollars ($200.00) if the vehicle is a 1981 or newer model.

(3) Is reinspected and again fails the inspection because it passes the visual inspection part of the inspection but fails the exhaust emissions analysis part of the inspection.

(4) Meets any other waiver criteria required by 40 C.F.R. § 51.360.

(b) Procedure. — To obtain a waiver, a person must contact a local enforcement office of the Division. Before issuing a waiver, an employee of the Division must review the inspection receipts issued for the inspections of the vehicle, review the documents establishing what repairs were made to the vehicle and at what cost, review any statement denying warranty coverage of the repairs made, and do a visual inspection of the vehicle, if appropriate, to determine if the documented repairs were made. The Division must issue a waiver if it determines that the vehicle qualifies for a waiver. A person to whom a waiver is issued must present the waiver to the self-inspector or inspection station performing the inspection to obtain an inspection sticker.

(c) Repairs. — The following repairs and their costs cannot be considered in determining whether the cost of repairs made to a vehicle equals or exceeds the waiver amount:

(1) Repairs covered by a warranty that applies to the vehicle.

(2) Repairs needed as a result of tampering with an emission control device of the vehicle.

(3) If the vehicle is a 1981 or newer model, repairs made by an individual who is not engaged in the business of repairing vehicles.

(d) Sticker Expiration. — An inspection sticker put on a vehicle after the vehicle receives a waiver from the requirement of passing the emissions inspection expires at the same time it would if the vehicle had passed the emissions inspection. (1965, c. 734, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

§ 20-183.6. Businesses that replace windshields must register with Division to get inspection stickers.

A person who is engaged in the business of replacing windshields on vehicles that are subject to inspection under this Part may register with the Division to obtain replacement inspection stickers for use on replaced windshields. A replacement inspection sticker put on a windshield that has been replaced must contain the same information and expire at the same time as the inspection sticker it replaces. A person who puts a replacement inspection sticker on a replaced windshield must remove the inspection sticker from the windshield that was replaced, attach the removed inspection sticker to a copy of the statement given the vehicle owner for replacing the windshield, and keep that copy of the statement until 18 months after the sticker was removed.

A person registered under this section must keep records of replacement stickers put on replaced windshields and must be able to account for all inspection stickers received from the Division. The Division may suspend or revoke the registration of a person under this section if the person fails to keep records required by the Division or is unable to account for inspection stickers received from the Division. An auditor of the Division may review the records of a person registered under this section during normal business hours.

A person who is registered under this section and has a safety inspection station license or an emissions inspection station license must keep the records of the inspection stickers used on replaced windshields separate from the records of the inspection stickers used on vehicles inspected. A person who is registered under this section and has an inspection station license may not inspect a vehicle whose windshield is being replaced unless the inspection sticker on the windshield has expired or expires at the end of the month in which the windshield is being replaced and the person has the vehicle owner's permission to inspect the vehicle. (1965, c. 734, s. 1; 1975, c. 109; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 3.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, rewrote the last sentence of the first paragraph; and added the last paragraph.

§ 20-183.6A. Administration of program; duties of license holders.

(a) Division. — The Division is responsible for administering the safety inspection and the emissions inspection programs. In exercising this responsibility, the Division must:

(1) Conduct performance audits, record audits, and equipment audits of those licensed to perform inspections to ensure that inspections are performed properly.

(2) Ensure that Division personnel who audit license holders are knowledgeable about audit procedures and about the requirements of both the safety inspection and the emissions inspection programs.

(3) Perform an emissions inspection on a vehicle when requested to do so by a vehicle owner so the owner can compare the result of the inspection performed by the Division with the result of an inspection performed at an emissions inspection station.

(4) Investigate complaints about a person licensed to perform inspections and reports of irregularities in performing inspections.

(5) Establish written procedures for the issuance of inspection stickers to persons licensed to perform inspections.

(6) Submit information and reports to the federal Environmental Protection Agency as required by 40 C.F.R. Part 51.

(b) License Holders. — A person who is licensed by the Division under this Part must post the license at the place required by the

Division and must keep a record of inspections performed. The inspection record must identify the vehicle that was inspected, indicate the type of inspection performed and the date of inspection, and contain any other information required by the Division. A self-inspector or an inspection station must send its records of inspections to the Division in the form and at the time required by the Division. An auditor of the Division may review the inspection records of a person licensed by the Division under this Part during normal business hours. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.7. Fees for performing an inspection and putting an inspection sticker on a vehicle; use of civil penalties.

(a) Fee Amount. — When a fee applies to an inspection of a vehicle or the issuance of an inspection sticker, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
Safety Only, Without After-Factory Tinted Window	$ 8.25	$ 1.00
Safety Only, With After-Factory Tinted Window	18.25	1.00
Emissions and Safety Without After-Factory Tinted Window	17.00	2.40
Emissions and Safety With After-Factory Tinted Window	27.00	2.40.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for performing an inspection of a vehicle with a tinted window applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint.

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee.

(b) Self-Inspector. — The fee for an inspection does not apply to an inspection performed by a self-inspector. The fee for putting an inspection sticker on a vehicle applies to an inspection performed by a self-inspector.

(c) Fee Distribution. — Fees collected for inspection stickers are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the Emissions Program Account established in subsection (d) of this section, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of Air Quality of the Department of

Environment and Natural Resources:

Recipient	Safety Only Sticker	Emissions and Safety Sticker
Highway Fund	.75	.00
Emissions Program Account	.00	1.80
Volunteer Rescue/EMS Fund	.15	.15
Rescue Squad Workers' Relief Fund	.10	.10
Division of Air Quality	.00	.35.

(d) Account. — The Emissions Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle emissions inspection and maintenance program.

(e) Civil Penalties. — Civil penalties collected under this Part shall be credited to the Highway Fund as nontax revenue. (1965, c. 734, s. 1; 1969, c. 1242; 1973, c. 1480; 1975, c. 547; c. 716, s. 5; c. 875, s. 4; 1979, c. 688; 1979, 2nd Sess., c. 1180, ss. 5, 6; 1981, c. 690, s. 17; 1981 (Reg. Sess., 1982), c. 1261, s. 2; 1985, c. 415, ss. 1-6; 1985 (Reg. Sess., 1986), c. 1018, s. 8; 1987, c. 584, ss. 1-3; 1987 (Reg. Sess., 1988), c. 1062, ss. 3-5; 1989, c. 391, s. 3; c. 534, s. 3; 1989 (Reg. Sess., 1990), c. 1066, s. 33(b); 1991 (Reg. Sess., 1992), c. 943, s. 1; 1993, c. 385, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 473, s. 3; 1995 (Reg. Sess., 1996), c. 743, s. 1; 1997-29, s. 4; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 12 provides for the payment of expenditures for the 1994-95 fiscal year for the Exhaust Emission Inspection Program.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "Air Quality" for "Environmental Management" twice in subsection (c).

Session Laws 1997-29, s. 4, effective July 1, 1997, added the first sentence in subsection (a).

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in subsection (c).

§ 20-183.8. Infractions and criminal offenses for violations of inspection requirements.

(a) Infractions. — A person who does any of the following commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars ($50.00):

(1) Operates a motor vehicle that is subject to inspection under this Part on a highway or public vehicular area in the State when the vehicle has not been inspected in accordance with this Part, as evidenced by the vehicle's lack of a current inspection sticker or otherwise.

(2) Allows an inspection sticker to be put on a vehicle owned or operated by that person, knowing that the vehicle was not inspected before the sticker was attached or was not inspected properly.

(3) Puts an inspection sticker on a vehicle, knowing or having reasonable grounds to know an inspection of the vehicle was not performed or was performed improperly. A person

who is cited for a civil penalty under G.S. 20-183.8B for an emissions violation involving the inspection of a vehicle may not be charged with an infraction under this subdivision based on that same vehicle.

(b) Defenses to Infractions. — Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) Repealed by Session Laws 1997-29, s. 5, effective November 1, 1997.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety-only inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued.

(c) Felony. — A person who does any of the following commits a Class I felony:

(1) Forges an inspection sticker.

(2) Buys, sells, or possesses a forged inspection sticker.

(3) Buys, sells, or possesses an inspection sticker other than as the result of either of the following:

a. Having a license as an inspection station, a self-inspector, or an inspection mechanic and obtaining the inspection sticker from the Division in the course of business.

b. A vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver. (1965, c. 734, s. 1; 1967, c. 692, s. 3; 1969, c. 179, s. 1; c. 620; 1973, cc. 909, 1322; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 4; 1985, c. 764, s. 23; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 5.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, in the beginning of subsection (a)(3) substituted "Puts" for "Attaches", substituted "on" for "to" following "sticker", added the last sentence; and deleted subsection (b)(3).

The 1997 amendment, effective November 1, 1997 and applicable to offenses committed on or after that date, rewrote subsection (c).

§ 20-183.8A. Civil penalties against motorists for emissions violations.

The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

(1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part.
(2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.
(3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle.

The amount of penalty is one hundred dollars ($100.00) if the vehicle is a pre-1981 vehicle and two hundred fifty dollars ($250.00) if the vehicle is a 1981 or newer model vehicle. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this subsection has been paid. (1993 (Reg. Sess., 1994), c. 754, ss. 1, 8.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1996, in the second paragraph added the second sentence.

§ 20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.

(a) Kinds of Violations. — The civil penalty schedule established in this section applies to emissions self-inspectors, emissions inspection stations, and emissions inspection mechanics. The schedule categorizes emissions violations into serious (Type I), minor (Type II), and technical (Type III) violations.

A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the emission reduction benefits of the emissions inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting an emissions inspection or complying with the emissions inspection requirements but does not directly affect the emission reduction benefits of the emissions inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.

(b) Penalty Schedule. — The Division must take the following action for a violation:

(1) Type I. — For a first or second Type I violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for six months. For a third or subsequent Type I violation within three years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one thousand dollars ($1,000) and revoke the license of the business for two years.

For a first or second Type I violation by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by an emissions inspection mechanic, assess a civil penalty of two hundred fifty dollars ($250.00) and revoke the mechanic's license for two years.

(2) Type II. — For a first or second Type II violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one hundred dollars ($100.00). For a third or subsequent Type II violation within three years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for 90 days.

For a first or second Type II violation by an emissions inspection mechanic, assess a civil penalty of fifty dollars ($50.00). For a third or subsequent Type II violation within seven years by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for 90 days.

(3) Type III. — For a first or second Type III violation by an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic, send a warning letter. For a third or subsequent Type III violation within three years by the same emissions license holder, assess a civil penalty of twenty-five dollars ($25.00).

(c) Station or Self-Inspector Responsibility. — It is the responsibility of an emissions inspection station and an emissions self-inspector to supervise the emissions mechanics it employs. A violation by an emissions inspector mechanic is considered a violation by the station or self-inspector for whom the mechanic is employed.

(d) Missing Stickers. — The Division must assess a civil penalty against an emissions inspection station or an emissions self-inspector that cannot account for an emissions inspection sticker issued to it. A station or a self-inspector cannot account for a sticker when the sticker is missing and the station or self-inspector cannot establish reasonable grounds for believing the sticker was stolen or destroyed by fire or another accident.

The amount of the penalty is twenty-five dollars ($25.00) for each missing sticker. If a penalty is imposed under subsection (b) of this section as the result of missing stickers, the monetary penalty that applies is the higher of the penalties required under this subsection and subsection (b); the Division may not assess a monetary penalty as a result of missing stickers under both this subsection and subsection (b). Imposition of a monetary penalty under this subsection does not affect suspension or revocation of a license required under subsection (b).

(e) Mechanic Training. — An emissions inspection mechanic whose license has been suspended or revoked must retake the course required under G.S. 20-183.4A and successfully complete the course before the mechanic's license can be reinstated. Failure to successfully complete this course continues the period of suspension or revocation until the course is completed successfully. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 6.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, in subsections (b)(1), (b)(2) and (b)(3), in the second sentence, substituted "three" for "seven"; in subsection (c) in the first senetence deleted "Type I" preceding "violation" twice, deleted the last two sentences which read "A Type II or III violation by an emissions mechanic is not automatically a Type II or III violation by the station or self-inspector for whom the mechanic is employed. The Division may determine when Type II or Type III violations by an emissions mechanic are so violations by the station or self-inspector"; and added subsection (e).

§ 20-183.8C. Acts that are Type I, II, or III emissions violations.

(a) Type I. — It is a Type I violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Put an emissions inspection sticker on a vehicle without performing an emissions inspection of the vehicle.

(1a) Put an emissions inspection sticker on a vehicle after performing an emissions inspection of the vehicle and determining that the vehicle did not pass the inspection.

(2) Use a test-defeating strategy when conducting an emissions inspection, such as holding the accelerator pedal down slightly during an idle test, disconnecting or crimping a vacuum hose to effect a passing result, or changing the emission standards for a vehicle by incorrectly entering the vehicle type or model year to achieve a passing result.

(3) Allow a person who is not licensed as an emissions inspection mechanic to perform an emissions inspection for a self-inspector or at an emissions station.

(4) Sell or otherwise give an inspection sticker to another other than as the result of a vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver.

(5) Be unable to account for five or more inspection stickers at any one time upon the request of an auditor of the Division.

(6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.

(7) Transfer an inspection sticker from one vehicle to another.

(b) Type II. — It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Use the identification code of another to gain access to an emissions analyzer.

(2) Keep inspection stickers and other compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.

(3) Put an emissions inspection sticker on a vehicle that is required to have one of the following emissions control devices but does not have it:

a. Catalytic converter.
b. PCV valve.
c. Thermostatic air control.
d. Oxygen sensor.
e. Unleaded gas restrictor.
f. Gasoline tank cap.
g. Air injection system.
h. Evaporative emissions system.
i. Exhaust gas recirculation (EGR) valve.

(4) Put an emissions inspection sticker on a vehicle without performing a visual inspection of the vehicle's exhaust system and checking the exhaust system for leaks.

(5) Impose no fee for an emissions inspection of a vehicle or the issuance of an emissions inspection sticker or impose a fee

for one of these actions in an amount that differs from the amount set in G.S. 20-183.7.

(c) Type III. — It is a Type III violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Fail to post an emissions license issued by the Division.
(2) Fail to send information on emissions inspections to the Division at the time or in the form required by the Division.
(3) Fail to post emissions information required by federal law to be posted.
(4) Fail to put the required information on an inspection sticker in a legible manner using ink.
(5) Fail to put the required information on an inspection receipt in a legible manner.
(6) Fail to maintain an emissions analyzer maintenance log.

(d) Other Acts. — The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 163, s. 11; 1997-29, s. 7; 1997-456, s. 35.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

Effect of Amendments. — Session Laws 1997-29, s. 7, effective July 1, 1997, in subsection (a)(1) substituted "vehicle" for "vehicle or after performing an emissions inspection in which the vehicle did not pass the inspection"; added subsection (a)(1a); added subsections (b)(3) through (b)(5), and added subsections (c)(3) through (c)(6).

Session Laws 1997-456, s. 35, effective August 29, 1997, substituted "G.S. 20-183.7" for "G.S. 20-187.3" in subdivision (b)(5).

§ 20-183.8D. Suspension or revocation of license.

(a) Safety. — The Division may suspend or revoke a safety self-inspector license, a safety inspection station license, and a safety inspection mechanic license issued under this Part if the license holder fails to comply with this Part or a rule adopted by the Commissioner to implement this Part.

(b) Emissions. — The Division may suspend or revoke an emissions self-inspector license, an emissions inspection station license, and an emissions inspection mechanic license issued under this Part for any of the following reasons:

(1) The suspension or revocation is imposed under G.S. 20-183.8B.
(2) Failure to pay a civil penalty imposed under G.S. 20-183.8B within 30 days after it is imposed. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 8.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, in the section heading substituted "license" for "license for safety violations"; added the subsection (a) designation and subcatchline; and added subsection (b).

§ 20-183.8E: Recodified as § 20-183.8G at the direction of the Revisor of Statutes.

Editor's Note. — This section was recodified as § 20-183.8G at the direction of the Revisor of Statutes in order to place § 20-183.8F between § 20-183.8D and this section, as specified in Session Laws 1997-29, s.9.

§ 20-183.8F. Requirements for giving certain emissions license holders notice of violations and for taking summary action.

(a) Finding of Violation. — When an auditor of the Division finds that an emissions violation has occurred that could result in the suspension or revocation of an emissions inspection station license, an emissions self-inspector license, or an emissions mechanic license, the auditor must give the affected license holder written notice of the finding. The notice must be given within five business days after the violation occurred. The notice must state the period of suspension or revocation that could apply to the violation and any monetary penalty that could apply to the violation. The notice must also inform the license holder of the right to a hearing if the Division charges the license holder with the violation.

(b) Notice of Charges. — When the Division decides to charge an emissions inspection station, an emissions self-inspector, or an emissions mechanic with a violation that could result in the suspension or revocation of the person's emissions license, an auditor of the Division must deliver a written statement of the charges to the affected license holder. The statement of charges must inform the license holder of this right, instruct the person on how to obtain a hearing, and inform the license holder of the effect of not requesting a hearing. The license holder has the right to a hearing before the license is suspended or revoked. G.S. 20-183.8E sets out the procedure for obtaining a hearing.

(c) Exception for Summary Action. — The right granted by subsection (b) of this section to have a hearing before an emissions license is suspended or revoked does not apply if the Division summarily suspends or revokes the license after a judge has reviewed and authorized the proposed action. A license issued to an emissions inspection station, an emissions self-inspector, or an emissions mechanic is a substantial property interest that cannot be summarily suspended or revoked without judicial review. (1997-29, s. 9.)

Editor's Note. — Session Laws 1997, c. 29, s. 9, made this section effective July 1, 1997.

This section was originally enacted as § 20-183.8D.1 and was renumbered as this section at the direction of the Revisor of Statutes.

§ 20-183.8G. Administrative and judicial review.

(a) Right to Hearing. — A person who applies for a license or registration under this Part or who has a license or registration issued under this Part has the right to a hearing when any of the following occurs:

(1) The Division denies the person's application for a license or registration.

(2) The Division delivers to the person a written statement of charges of an emissions violation that could result in the suspension or revocation of the person's emissions license.
(3) The Division summarily suspends or revokes the person's license following review and authorization of the proposed adverse action by a judge.
(4) The Division assesses a civil penalty against the person.
(5) The Division issues a warning letter to the person.
(6) The Division cancels the person's registration.

(b) Hearing After Statement of Charges. — When an emissions license holder receives a statement of charges of an emissions violation that could result in the suspension or revocation of the person's emissions license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within three business days after receiving the request unless the person requesting the hearing asks for additional time to prepare for the hearing. A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested. The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing.

(c) Hearing After Summary Action. — When the Division summarily suspends a license issued under this Part after judicial review and authorization of the proposed action, the person whose license was suspended or revoked may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person was notified of the summary action. The Division must hold a hearing requested under this subsection within 14 days after receiving the request.

(d) All Other Hearings. — When this section gives a person the right to a hearing and subsection (b) or (c) of this section does not apply to the hearing, the person may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person receives written notice of the action for which a hearing is requested. The Division must hold a hearing within 90 days after the Division receives the request.

(e) Review by Commissioner. — The Commissioner may conduct a hearing required under this section or may designate a person to conduct the hearing. When a person designated by the Commissioner holds a hearing and makes a decision, the person who requested the hearing has the right to request the Commissioner to review the decision. The procedure set by the Division governs the review by the Commissioner of a decision made by a person designated by the Commissioner.

(f) Decision. — A decision made after a hearing on the imposition of a monetary penalty against a motorist for an emissions violation or on a Type I, II, or III emissions violation by an emissions license holder must uphold any monetary penalty, license suspension, license revocation, or warning required by G.S. 20-183.8A or G.S. 20-183.8B, respectively, if the decision contains a finding that the motorist or license holder committed the act for which the monetary penalty, license suspension, license revocation, or warning was imposed. A decision made after a hearing on any other action may uphold or modify the action.

(g) Judicial Review. — Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision made under this section. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 10.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

This section was formerly § 20-183.8E, it has been renumbered as this section at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, rewrote the section.

Article 3B.

Permanent Weighing Stations and Portable Scales.

§ **20-183.11:** Repealed by Session Laws 1995, c. 109, s. 5, effective October 1, 1995.

§ **20-183.12:** Repealed by Session Laws 1995, c. 163, s. 12, effective June 5, 1995.

Article 4.

State Highway Patrol.

§ 20-187.3. Quotas prohibited.

Editor's Note. —

Session Laws 1995, c. 358, s. 2, as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that no person may receive a salary increase under this section prior to July 28, 1995.

§ **20-193:** Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 18, effective July 16, 1994.

Article 6.

Giving Publicity to Highway Traffic Laws through the Public Schools.

§§ **20-212 through 20-215:** Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 19, effective July 16, 1994.

ARTICLE 6A.

Motor Carriers of Migratory Farm Workers.

§ 20-215.1. Definitions.

The following definitions apply in this Article:

(1) Migratory farm worker. — An individual who is employed in agriculture.

(2) Motor carrier of migratory farm workers. — A person who for compensation transports at any one time in North Carolina five or more migratory farm workers to or from their employment by any motor vehicle, other than a passenger automobile or station wagon. The term does not include any of the following:

a. A migratory farm worker who is transporting his or her immediate family.

b. A carrier of passengers regulated by the North Carolina Utilities Commission or the United States Department of Transportation.

c. The transportation of migratory farm workers on a vehicle owned by a farmer when the migratory farm workers are employed or to be employed by the farmer to work on a farm owned or controlled by the farmer.

(3) Repealed by Session Laws 1973, c. 1330, s. 39. (1961, c. 505, s. 1; 1973, c. 1330, s. 39; 1995 (Reg. Sess., 1996), c. 756, s. 17.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote this section.

§ 20-215.4. Violation of regulations a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 381, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 7.

Miscellaneous Provisions Relating to Motor Vehicles.

§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.

Editor's Note. — Session Laws 1983, c. 779, s. 3 formerly provided that the act should become effective October 1, 1983 and expire October 1, 1985 and that this section should not be effective on and after said date. However, as amended by

Session Laws 1985, c. 700, s. 1, Session Laws 1983, c. 779, s. 3 now reads: "This act shall become effective October 1, 1983. G.S. 20-217(f) shall expire October 1, 1987 and shall not be effective on and after that date."

Session Laws 1993, c. 539, s. 382, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in In re Fuller, 345 N.C. 157, 478 S.E.2d 641 (1996).

§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.

(a) Qualifications. — No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by children unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. — It is unlawful to drive a school bus loaded with children over the highways or public vehicular areas of the State at a greater rate of speed than 45 miles per hour. It is unlawful to drive a school activity bus loaded with children over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. — A person who violates this section commits a Class 3 misdemeanor. (1937, c. 397, ss. 1-3; 1941, c. 21; 1943, c. 440; 1945, c. 216; 1957, cc. 139, 595; 1971, c. 293; 1977, c. 791, ss. 1, 2; c. 1102; 1979, c. 31, ss. 1, 2; c. 667, s. 36; 1981, c. 30; 1987, c. 337, s. 1; 1989, c. 558, s. 1; c. 771, s. 6; 1991, c. 726, s. 22; 1993, c. 217, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 20.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 20, which amended this section, was effective the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539.

§ 20-218.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 21, effective July 16, 1994.

§ 20-218.2. Speed limit for nonprofit activity buses.

It is unlawful to drive an activity bus that is owned by a nonprofit organization and is transporting persons in connection with nonprofit activities over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour. A person who violates this section commits a Class 3 misdemeanor. (1969, c. 1000, s. 2; 1987, c. 337, s. 2; 1993 (Reg. Sess., 1994), c. 761, s. 23.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 23, which amended this section was, effective the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539.

§ 20-219: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 24, effective July 16, 1994.

§ 20-219.2. Removal of unauthorized vehicles from private lots.

Editor's Note. —

Session Laws 1993, c. 539, s. 383, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 7A.

Post-towing Procedures.

§ 20-219.10. Coverage of Article.

(a) This Article applies to each towing of a vehicle that is carried out pursuant to G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law-enforcement officer except:

(1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only insofar as specifically provided;

(2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;

(3) This Article does not apply to a seizure of a vehicle pursuant to a levy under execution.

(b) A person who authorizes the towing of a vehicle covered by this Article, G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303 or 160A-303.2 is a legal possessor of the vehicle within the meaning of G.S. 44A-1(1). (1983, c. 420, s. 2; 1989, c. 743, s. 3; 1997-379, s. 1.7.)

Editor's Note. — Session Laws 1997-379, s. 7, provides in part: "Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense."

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, and applicable to offenses committed on or after that date, inserted "20-28.2, 20-28.3" in subdivision (a)(2).

ARTICLE 8A.

Issuance of New Licenses to Persons Adjudged Habitual Offenders.

§ 20-231.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 25, effective July 16, 1994.

ARTICLE 9A.

Motor Vehicle Safety and Financial Responsibility Act of 1953.

§ 20-279.1. Definitions.

Legal Periodicals. — For note, "Underinsured Motorist Coverage: North Carolina's Multiple Claimant Wrinkle — Ray v. Atlantic Casualty Insurance Co.," see 17 Campbell L. Rev. 147 (1995).

CASE NOTES

Cited in Metropolitan Property & Cas. Ins. Co. v. Lindquist, 120 N.C. App. 847, 463 S.E.2d 574 (1995).

§ 20-279.4: Repealed by Session Laws 1995, c. 191, s. 4, effective January 1, 1996.

§ 20-279.5. Security required unless evidence of insurance; when security determined; suspension; exceptions.

(a) When the Division receives a report of a reportable accident under G.S. 20-166.1, the Commissioner must determine whether the owner or driver of a vehicle involved in the accident must file security under this Article and, if so, the amount of security the owner or driver must file. The Commissioner must make this determination at the end of 20 days after receiving the report.

(b) The Commissioner shall, within 60 days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and each owner of a motor vehicle in any manner involved in such accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, unless such operator or owner, or both, shall deposit security in the sum so determined by the Commissioner; provided, notice of such suspension shall be sent by the Commissioner to such operator and owner not less than 10 days prior to the effective date of such suspension and shall state the amount required as security; provided further, the provisions of this Article requiring the deposit of security and the suspension of license for failure to deposit security shall not apply to an operator or owner who would otherwise be required to deposit security in an amount not in excess of one hundred dollars ($100.00). Where erroneous information is given the Commissioner with respect to the matters set forth in subdivisions (1), (2) or (3) of subsection (c) of this section or with respect to the ownership or operation of the vehicle, the extent of damage and injuries, or any other matters which would have affected the Commissioner's action had the information been previously submitted, he shall take appropriate action as hereinbefore provided, within 60 days after receipt by him of correct information with respect to said matters. The Commissioner, upon request and in his discretion, may postpone the effective date of the suspension provided in this section by 15 days if, in his opinion, such extension would aid in accomplishing settlements of claims by persons involved in accidents.

(c) This section shall not apply under the conditions stated in G.S. 20-279.6 nor:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Commissioner, covered by any other form of liability insurance policy or bond or sinking fund or group assumption of liability;

(4) To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor

(5) To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946, which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one accident. (1953, c. 1300, s. 5; 1955, cc. 138, 854; c. 855, s. 1; c. 1152, ss. 4-8; c. 1355; 1967, c. 277, s. 2; 1971, c. 763, s. 3; 1973, c. 745, s. 2; 1979, c. 832, s. 2; 1983, c. 691, s. 2; 1991, c. 469, s. 2; 1995, c. 191, s. 5.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, rewrote subsection (a).

Legal Periodicals. —

For note, "Underinsured Motorist Coverage: North Carolina's Multiple Claimant Wrinkle — Ray v. Atlantic Casualty Insurance Co.," see 17 Campbell L. Rev. 147 (1995).

CASE NOTES

Stated in Maryland Cas. Co. v. Smith, 117 N.C. App. 593, 452 S.E.2d 318 (1995).

Cited in Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

§ 20-279.7A. Forms to carry statement concerning perjury.

A person who makes a false affidavit or falsely sworn or affirmed statement concerning information required to be submitted under this Article commits a Class I felony. The Division shall include a statement of this offense on a form that it provides under this Article and that must be completed under oath. (1983, c. 610, s. 3; 1993 (Reg. Sess., 1994), c. 761, s. 26.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993

Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 26, which amended this section, was effective the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539.

§ 20-279.11. Matters not to be evidence in civil suits.

Neither the information on financial responsibility contained in an accident report, the action taken by the Commissioner pursuant to this Article, the findings, if any, of the Commissioner upon which the action is based, or the security filed as provided in this Article shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. (1953, c. 1300, s. 11; 1995, c. 191, s. 6.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, substituted "information on financial responsibility contained in an accident report" for "report required by G.S. 20-279.4" following "Neither the" and substituted "the" for "such" preceding "action is based".

§ 20-279.21. "Motor vehicle liability policy" defined.

(a) A "motor vehicle liability policy" as said term is used in this Article shall mean an owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident, and fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one accident; and

(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless cov-

erage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000), as selected by the policy owner. The provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of up to the limits of property damage liability in the owner's policy of liability insurance, and subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this subdivision is not applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured in the policy does not reject uninsured motorist coverage and does not select different coverage limits, the amount of uninsured motorist coverage shall be equal to the highest limit of bodily injury and property damage liability coverage for any one vehicle in the policy. Once the option to reject the uninsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless the named insured makes a written request to exercise a different option. The selection or rejection of uninsured motorist coverage or the failure to select or reject by a named insured is valid and binding on all insureds and vehicles under the policy. Rejection of or selection of different coverage limits for uninsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by a named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.

Where coverage is provided on more than one vehicle insured on the same policy or where the owner or the named insured has more than one policy with coverage under this subdivision, there shall not be permitted any combination of coverage within a policy or where more than one policy may apply to determine the total amount of coverage available.

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;

b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);

d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle.

(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000) as selected by the policy owner. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or

insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, and within 30 days following the date of its delivery to him of any motor vehicle owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this Article as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this Article.

(e) Such motor vehicle liability policy need not insure against loss from any liability for which benefits are in whole or in part either payable or required to be provided under any workers' compensation law nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) Except as hereinafter provided, the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan or through the North Carolina Motor Vehicle Reinsurance Facility, a default judgment taken against such an insured shall not be used as a basis for obtaining judgment against the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered or certified mail with return receipt requested, or served by any other method of service provided by law, a copy of summons, complaint, or other pleadings, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the North Carolina Motor Vehicle Reinsurance Facility.

The insurer, upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the time in question, that the operator was not an "insured" under policy provisions, or that the policy had been lawfully canceled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the Article shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Article. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this Article.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(*l*) A party injured by an uninsured motor vehicle covered under a policy in amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds the liability policy limits, as consideration for payment of any applicable policy limits by the insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available uninsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing uninsured motorist coverage from pursuing any right of subrogation. (1953, c. 1300, s. 21; 1955, c. 1355; 1961, c. 640; 1965, c. 156; c. 674, s. 1; c. 898; 1967, c. 277, s. 4; c. 854; c. 1159, s. 1; c. 1162, s. 1; c. 1186, s. 1; c. 1246, s. 1; 1971, c. 1205, s. 2; 1973, c. 745, s. 4; 1975, c. 326, ss. 1, 2; c. 716, s. 5; c. 866, ss. 1-4; 1979, cc. 190, 675; c. 832, ss. 6, 7; 1983, c. 777, ss. 1, 2; 1985, c. 666, s. 74; 1985 (Reg. Sess., 1986), c. 1027, ss. 41, 42; 1987, c. 529; 1987 (Reg. Sess., 1988), c. 975, s. 33; 1991, c. 469, s. 4; c. 636, s. 3; c. 646, ss. 1, 2; c. 761, s. 12.3; 1991 (Reg. Sess., 1992), c. 837, s. 9; 1997-396, ss. 2, 3.)

Effect of Amendments. — Session Laws 1997-396, ss. 2 and 3, effective August 14, 1997, added the sixth paragraph of subdivision (b)(4), and added subsection (*l*).

Legal Periodicals. —

For note, "Baxley v. Nationwide Mutual Insurance Company: A Key Loophole in the Financial Responsibility Act of 1953 Comes to Light," see 72 N.C.L. Rev. 1809 (1994).

For note, "Underinsured Motorist Coverage: North Carolina's Multiple Claimant Wrinkle — Ray v. Atlantic Casualty Insurance Co.," see 17 Campbell L. Rev. 147 (1995).

For survey, "Reconciling North Carolina's Interpretation of 'Legally Entitled to Recover' with the Spirit of the Uninsured Motorist Statute: The Lessons of Grimsley v. Nelson," see 73 N.C.L. Rev. 2474 (1995).

CASE NOTES

I. General Consideration.
II. The Omnibus Clause.
III. Uninsured Motorist Coverage.
IV. Underinsured Motorist Coverage.

I. GENERAL CONSIDERATION.

The manifest purpose of this Article, etc. —

The purpose of the Financial Responsibility Act has always been to protect innocent motorists from financially irresponsible motorists. Nationwide Mut. Ins. Co. v. Baer, 113 N.C. App. 517, 439 S.E.2d 202 (1994).

Protection of innocent victims who may be injured by financially irresponsible motorists has repeatedly been held to be the fundamental purpose of the Financial Responsibility Act. Hartford Underwriters Ins. Co. v. Becks, 123 N.C. App. 489, 473 S.E.2d 427 (1996).

The purpose of uninsured motorist (UM) and underinsured motorist (UIM) coverage is to compensate the innocent victims of financially irresponsible motorists. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), cert. improvidently granted in part, aff'd in part and rev'd in part on other grounds, 341 N.C. 678, 462 S.E.2d 650 (1995).

The provisions of this section are written into every policy, etc. —

When a statute is applicable to the terms of an insurance policy, the provisions of the statute become the terms of the policy, as if written into it. If the terms of the statute and the policy conflict, the statute prevails. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), cert. improvidently granted in part, aff'd in part and rev'd in part on other grounds, 341 N.C. 678, 462 S.E.2d 650 (1995).

When a statute applies to the terms of an insurance policy, the provisions of the statute become terms of the policy to the same extent as if they were written in the policy, and if the terms of the policy conflict with the statute, the provisions of the statute control. Baxley v. Nationwide Mut. Ins. Co., 115 N.C. App. 718, 446 S.E.2d 597 (1994).

Construction of Statute with Terms of Policy. — When a statute is applicable to the terms of an insurance policy, the provisions of the statute become a part of the policy as if written into it. If the terms of the statute and the policy conflict, the statute prevails. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 341 N.C. 678, 462 S.E.2d 650 (1995).

Exclusionary Provisions Contravening Article Are Void. —

The public policy goals of the Financial Responsibility Act apply only when the Act itself is being construed or when determinations are being made regarding the extent to which the Act, as to its mandatory minimum coverages, may override conflicting insurance policy provisions. Newell v. Nationwide Mut. Ins. Co., 334 N.C. 391, 432 S.E.2d 284 (1993).

Limiting and exclusionary provisions of insurance policies that reduced coverage for insureds to the extent a workers' compensation carrier may benefit were unenforceable because they conflicted with the Motor Vehicle and Financial Responsibility Act. Liberty Mut. Ins. Co. v. Ditillo, 125 N.C. App. 701, 482 S.E.2d 743 (1997).

Financial Responsibility Act did not apply to passengers in rental car; therefore, the provisions of policy limiting and excluding coverage to the extent a workers' compensation carrier would benefit were enforceable. Liberty Mut. Ins. Co. v. Ditillo, 125 N.C. App. 701, 482 S.E.2d 743 (1997).

Family Member Exclusion. — Insurance policy's "family member" exclusion for UM coverage is repugnant to the purpose of UM and UIM coverage and is therefore invalid. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), cert. improvidently granted in part, aff'd in part and rev'd in part on other grounds, 341 N.C. 678, 462 S.E.2d 650 (1995).

Where a person is injured through the negligence of an insured family member while riding with that family member in an insured vehicle, the Financial Responsibility Act prevents the operation of a family member exclusion in the policy's liability section to bar coverage. Cartner v. Nationwide Mut. Fire Ins. Co., 123 N.C. App. 251, 472 S.E.2d 389 (1996).

"Family Owned" vs. "Household Owned". — Although a "family-owned vehicle" or "household-owned vehicle" exclusion may be clear and unambiguous, it will not be upheld by our courts in the context of uninsured motorist/underinsured motorist coverage. Nationwide Mut. Ins. Co. v. Lankford, 118 N.C. App. 368, 455 S.E.2d 484 (1995).

Classes of Insureds. — There is nothing in this section which indicates that if a person is otherwise covered as a first class insured he loses this coverage if he is covered as a second class insured on another policy. Mitchell v. Nationwide Mut. Ins. Co., 335 N.C. 433, 439 S.E.2d 110 (1994).

The injured party in an automobile accident is an intended third-party beneficiary to the insurance contract between insurer and the tortfeasor/insured party. Murray v. Nationwide Mut. Ins. Co., 123 N.C. App. 1, 472 S.E.2d 358 (1996).

Stacking Fleet and Non-Fleet Policies. — The interpolicy stacking of fleet and non-fleet policies is permissible. Isenhour v. Universal Underwriters Ins. Co., 341 N.C. 597, 461 S.E.2d 317 (1995).

Interpolicy and Intrapolicy Stacking. — A person living in the household with relatives should be allowed to aggregate or stack, both interpolicy and intrapolicy, the underinsured motorist coverages of the relatives and to collect on those stacked coverages. Mitchell v. Nationwide Mut. Ins. Co., 335 N.C. 433, 439 S.E.2d 110 (1994).

Phantom Vehicle. —

The legislature never intended for subdivisions (b)(3) and (b)(4) of this section to provide coverage where plaintiff was injured by an unknown/uninsured motorist without making contact with the unknown motorist's vehicle. Johnson v. North Carolina Farm Bureau Ins. Co., 112 N.C. App. 623, 436 S.E.2d 265 (1993).

An unidentified motor vehicle is statutorily treated as an uninsured motor vehicle. Johnson v. North Carolina Farm Bureau Ins. Co., 112 N.C. App. 623, 436 S.E.2d 265 (1993).

"Using" a Vehicle. — Where plaintiff was struck while walking on the shoulder of the road in search of mechanical assistance after the vehicle he was driving broke down, plaintiff was "using" the vehicle at the time of the accident. As such, plaintiff was an insured of the insurance company at the time of the accident. Falls v. North Carolina Farm Bureau Mut. Ins. Co., 114 N.C. App. 203, 441 S.E.2d 583, cert. denied, 337 N.C. 691, 448 S.E.2d 521 (1994).

Van which child had just left when she was hit by a truck was in "use" at the time of the accident where there was a casual connection between the use of the van and the accident, in that it was because van was parked where it was, child had to cross the roadway, therefore auto policy provided coverage. Nationwide Mut. Ins. Co. v. Davis, 118 N.C. App. 494, 455 S.E.2d 892 (1995).

Regular and Normal Use of a Vehicle. — In order for an injury to be compensable there must be a causal connection between the use of the vehicle and the injury; this connection is shown if the injury is the natural and reasonable consequence of the vehicle's use; however, an injury is not a "natural and reasonable consequence of the use" of the vehicle if the injury is the result of something wholly disassociated from, independent of, and remote from the vehicle's normal use. Clearly, an automobile chase with guns blazing is not a regular and normal use of a vehicle. Scales v. State Farm Mut. Auto. Ins. Co., 119 N.C. App. 787, 460 S.E.2d 201 (1995).

"Nonfleet" Vehicles. — Fire vehicles listed in policy were private passenger vehicles not used in insured's business and hence "nonfleet" vehicles to which the exception to intrapolicy stacking of subdivision (b)(4) as it read prior to 1991 did not apply. McCaskill v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 118 N.C. App. 320, 454 S.E.2d 842 (1995).

Throwing an object from a car at someone on the side of the road was an independent act disassociated from the use of an automobile, for which the insurance policy did not provide coverage through it's "arising from the ownership maintenance or use of" language. Providence Wash. Ins. Co. v. Locklear ex rel. Smith, 115 N.C. App. 490, 445 S.E.2d 418 (1994).

Fraud in Application. — As to coverage required by the Financial Responsibility Act, fraud in an application for motor vehicle liability insurance is not a defense to the insurer's liability once injury has occurred. Hartford Underwriters Ins. Co. v. Becks, 123 N.C. App. 489, 473 S.E.2d 427 (1996).

Settlement of Claims by Insurer. — In accord with eleventh paragraph in main volume. Braddy v. Nationwide Mut. Liab. Ins. Co., 122 N.C. App. 402, 470 S.E.2d 820 (1996).

Because plaintiff was afforded the opportunity to be heard on his claim for damages against the tortfeasor, and his derivative claim for UIM coverage against his insurer sounded in tort, plaintiff's due process rights were not violated by allowing his insurer to proceed as an unnamed party after it settled with tortfeasor. Braddy v. Nationwide Mut. Liab. Ins. Co., 122 N.C. App. 402, 470 S.E.2d 820 (1996).

Reducing Defendant's Liability to Injured Plaintiff by Amount of Workers' Compensation Paid to Plaintiff Was Improper. —

Defendant insurance company, insurer of vehicle plaintiff was driving at the time of collision, was not entitled to reduce the limits of its uninsured motorists coverage by any amounts paid or to be paid to plaintiff or on her behalf by her employer's workers' compensation insurance carrier as workers' compensation benefits; employer's worker's compensation insurance carrier was entitled to a lien against all amounts paid or to be paid to plaintiff by defendant insurer of vehicle. Hieb v. St. Paul Fire & Marine Ins. Co., 112 N.C. App. 502, 435 S.E.2d 826 (1993).

Operator Within Scope of Permission. — As an operator of one of garage automobiles within the scope of its permission, daughter of persons to whom car was loaned to was an insured under garage's insurance policy and insurer was responsible for providing liability coverage for her. Integon Indem. Corp. v. Universal Underwriters Ins. Co., 342

N.C. 166, 463 S.E.2d 389 (1995).

Use by Prohibited Party. — This section did not impose coverage when owner's permittee gave possession to a third party who knew that he was prohibited from using the vehicle. Nationwide Mut. Ins. Co. v. Baer, 113 N.C. App. 517, 439 S.E.2d 202 (1994).

Where the forecast of evidence before the trial court showed there was no collision or contact between the automobile driven by the unknown motorist, which allegedly caused accident, and any other automobile, including that driven by plaintiff's intestate, defendant insurance company was entitled to judgment as a matter of law. Andersen v. Baccus, 335 N.C. 526, 439 S.E.2d 136 (1994).

Out of State Law Applied. — Although North Carolina's legislature, in subsection (b), has determined that family members are not to be excluded from primary or uninsured motorist/underinsured motorist coverage, where Tennessee law governed because significant connection existed with Tennessee and the connection with North Carolina was casual, family member exclusion in policy would be applied. Johns v. Automobile Club Ins. Co., 118 N.C. App. 424, 455 S.E.2d 466 (1995).

Payments made to the victim pursuant to under-insured or uninsured coverage are from a collateral source as defined in § 15B-2; an award under the Crime Victims Compensation Act, Chapter 15B, will be reduced to the extent that the economic loss will be recouped from under-insured or uninsured coverage. Onley v. Nationwide Mut. Ins. Co., 118 N.C. App. 686, 456 S.E.2d 882 (1995).

Applied in Wiggins v. Nationwide Mut. Ins. Co., 112 N.C. App. 26, 434 S.E.2d 642 (1993); Nationwide Mut. Ins. Co. v. Williams, 123 N.C. App. 103, 472 S.E.2d 220 (1996).

Quoted in Vasseur v. St. Paul Mut. Ins. Co., 123 N.C. App. 418, 473 S.E.2d 15 (1996).

Cited in Cagle v. Teachy, 111 N.C. App. 244, 431 S.E.2d 801 (1993); Hackett v. Bonta, 113 N.C. App. 89, 437 S.E.2d 687 (1993); Ragan v. Hill, 337 N.C. 667, 447 S.E.2d 371 (1994); Grimsley v. Nelson, 117 N.C. App. 329, 451 S.E.2d 336 (1994), aff'd in part and rev'd in part, 342 N.C. 542, 467 S.E.2d 92 (1995); Metropolitan Property & Cas. Ins. Co. v. Lindquist, 120 N.C. App. 847, 463 S.E.2d 574 (1995); Grimsley v. Nelson, 342 N.C. 542, 467 S.E.2d 92 (1996); Martin v. Continental Ins. Co., 123 N.C. App. 650, 474 S.E.2d 146 (1996).

II. THE OMNIBUS CLAUSE.

Where the named insured did not hold legal title to the automobile involved in the collision and dealer plates affixed thereto constituted the sole relationship between the car and the dealership, standing alone this connection was simply too weak to impose mandatory liability coverage on the basis of the owner's policy provisions of subsection (b). McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487, cert. denied, 337 N.C. 694, 448 S.E.2d 528 (1994).

III. UNINSURED MOTORIST COVERAGE.

Coverage for Person Walking Down the Street. — As a person insured of the first class, plaintiff was entitled to UM benefits under the policy regardless of whether she was riding in the insured vehicle or walking down the street. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), cert. improvidently granted in part, aff'd in part and rev'd in part on other grounds, 341 N.C. 678, 462 S.E.2d 650 (1995).

Insolvency of Insurer of Vehicle Causing Loss. —

Under an insurance policy providing that a vehicle is uninsured if the liability insurer "is or becomes insolvent" without specifying any period of time, an uninsured motorist claim may not be barred even though the minimum period specified in subsection (b)(3)(b) has elapsed. North Carolina Ins. Guar. Ass'n v. State Farm Mut. Auto. Ins. Co., 115 N.C. App. 666, 446 S.E.2d 364 (1994).

While the General Assembly has prescribed the minimum time period within which insolvency protection must be provided, it also has expressly permitted an insurer to include, within a policy, coverage which extends beyond the mandated minimum term. North Carolina Ins. Guar. Ass'n v. State Farm Mut. Auto. Ins. Co., 115 N.C. App. 666, 446 S.E.2d 364 (1994).

Subrogation Lien. — The workers' compensation carrier for plaintiffs had a subrogation lien on the uninsured motorist policy proceeds paid to plaintiff employee who was injured in an automobile accident occurring while within the scope of employment. Bailey v. Nationwide Mut. Ins. Co., 112 N.C. App. 47, 434 S.E.2d 625 (1993).

Workers' compensation carrier had a right to a lien on employee-defendants' potential uninsured motorist benefits. Liberty Mut. Ins. Co. v. Ditillo, 125 N.C. App. 701, 482 S.E.2d 743 (1997).

Stacking Not Required. —

The language in insurance company's policy was unambiguous and straightforward and it did not permit the intrapolicy stacking of its uninsured motorist (UM) coverage; therefore, the UM policy coverages on the three separate vehicles covered by plaintiffs' auto liability insurance policy with defendant insurance company would not be stacked intrapolicy to satisfy husband and wife's damages. Bailey v. Nationwide Mut. Ins. Co., 112 N.C. App. 47, 434 S.E.2d 625 (1993).

Default Judgment Against Uninsured Motorist Prohibited. — The purpose of that portion of this section prohibiting entry of default judgments is to provide the insurer, who has filed a timely answer, an opportunity to defend the complaint without being prejudiced by the conduct of the uninsured motorist who may, and usually does, have absolutely no interest in the law suit; otherwise, the insurer's liability being derivative, the entry of a default or default judgment, against the uninsured motorist also establishes the liability of the insurer. Abrams v. Surrette, 119 N.C. App. 239, 457 S.E.2d 770 (1995).

Uninsured motorist provision of insurance policy held to provide coverage for parent's claim for minor child's medical expenses; child's distinct claims and coverage, raised under his separate contract of insurance, were irrelevant. Nationwide Mut. Ins. Co. v. Lankford, 118 N.C. App. 368, 455 S.E.2d 484 (1995).

Uninsured Motorist Coverage Improperly Reduced by Amount of Worker's Compensation. — The trial court erred in reducing the amount of uninsured motorist coverage (UM) by the amount of workers' compensation benefits paid to plaintiff where the applicable policies were personal rather than business policies. McMillian v. North Carolina Farm Bureau Mut. Ins. Co., 125 N.C. App. 247, 480 S.E.2d 437 (1997).

Use of Vehicle. — Where plaintiff policeman was directing traffic at the time of accident, as the plaintiff was using his vehicle to assist him in the performance of his duties as a police officer, the vehicle was being put to service for a purpose intended by city; therefore, the plaintiff was among those persons insured under the statute and was entitled to uninsured motorist coverage. Maring v. Hartford Cas. Ins. Co., — N.C. App. —, 484 S.E.2d 417 (1997).

Illustrative Case. — Where the liability limits of business automobile policy were $300,000 and there was no written rejection of uninsured motorist (UM) coverage by the plaintiff, they were entitled to $300,000 of UM coverage, an amount equal to the liability limits of the policy. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 341 N.C. 678, 462 S.E.2d 650 (1995).

IV. UNDERINSURED MOTORIST COVERAGE.

Legislative Intent. — The amendments to this section do not indicate the General Assembly intended to change the focus of underinsured motorist (UIM) coverage from persons to vehicles; the anti-intrapolicy stacking provisions in the 1991 amendments simply prevent an insured from receiving multiple UIM recoveries under a single policy. They do not prevent an insured from being covered while operating an owned vehicle not listed in the policy. Honeycutt v. Walker, 119 N.C. App. 220, 458 S.E.2d 23 (1995).

Although the better practice would be for the insured to notify the UIM carrier when the insured has received an acceptable offer from the liability carrier, there is nothing in the statute which requires written notice to the UIM insurer be made directly by the insured. Daughtry v. Castleberry, 123 N.C. App. 671, 474 S.E.2d 137 (1996).

Rejection of Coverage Prior to Amendment. — Insured's rejection of underinsured motorists coverage, prior to the 1991 statutory amendment and prior to the approval of new form reflecting the substance of the statutory amendment, was not still valid and effective with respect to an accident that occurred after the rejection form had been substantially revised and after the policy had been renewed. Maryland Cas. Co. v. Smith, 117 N.C. App. 593, 452 S.E.2d 318 (1995).

Definition of Underinsured Does Not Incorporate Definition of Uninsured. — The legislature did not intend to fully incorporate the definition of an uninsured motor vehicle into the definition of an underinsured highway vehicle. Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

State-Owned Vehicles Can Be Underinsured Vehicles. — An underinsured highway vehicle as defined in subsection (b)(4) of this section can include a state-owned vehicle. Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

Definition of "Person Insured." — Where plaintiff lived in the same household as his father, the owner of an automobile insurance policy providing underinsured motorist (UIM) coverage for two vehicles, plaintiff was a "person insured" under the policy and was entitled to the same rights to stack coverages intrapolicy as the owner. Miller v. Nationwide Mut. Ins. Co., 112 N.C. App. 295, 435 S.E.2d 537 (1993), cert. denied, 335 N.C. 770, 442 S.E.2d 519 (1994).

The distinction between an underinsured motorist policy purchased by the employee and one covering the employee but purchased by his spouse while a resident of the same household is unimportant. Creed v. R.G. Swaim & Son, 123 N.C. App. 124, 472 S.E.2d 213 (1996).

Intentional and Fraudulent Misrepresentations. — An insurer may deny UIM coverage in excess of the statutory minimum based upon intentional and fraudulent misrepresentations or concealment by an insured in procurement of an automobile liability insurance policy. Hartford Underwriters Ins. Co. v. Becks, 123 N.C. App. 489, 473 S.E.2d 427 (1996).

Claim Estimates Properly Excluded as Evidence. — In personal injury action against plaintiff's UIM insurer, admitting claim estimates prepared by the insurer as admissions of a party opponent would unduly prejudice the defense and circumvent the policy of having the jury focus on the facts and not the existence of liability insurance. Braddy v. Nationwide Mut. Liab. Ins. Co., 122 N.C. App. 402, 470 S.E.2d 820 (1996).

Vehicle Not Included. — An underinsured vehicle, as that term is used in subdivision (b)(4), does not include a tort-feasor's vehicle whose available liability insurance is less than the relevant underinsured motorist (UIM) coverage. Ray v. Atlantic Cas. Ins. Co., 112 N.C. App. 259, 435 S.E.2d 80, cert. denied, 335 N.C. 559, 439 S.E.2d 151 (1993).

An owned vehicle exclusion is contrary to the terms of subdivision (b)(4), whether it is judicially imposed or whether it is contained in the underinsured motorist (UIM) portion of the policy. Nationwide Mut. Ins. Co. v. Mabe, 115 N.C. App. 193, 444 S.E.2d 664 (1994), aff'd, 342 N.C. 482, 467 S.E.2d 34 (1996).

Policy Provisions Which Excluded "Owned Vehicles" from Underinsured Motorist (UIM) Coverage Were Invalid. — An underinsured highway vehicle as defined in subdivision (b)(4) can include a motor vehicle owned by the named insured, and the provisions in policies issued by an insurer attempting to exclude such coverage are invalid and unenforceable. State Farm Mut. Auto. Ins. Co. v. Young, 122 N.C. App. 505, 470 S.E.2d 361 (1996).

Family Owned Exclusion Clause. — The existence of a family-owned exclusion clause in insured's insurance policy did not affect whether plaintiffs were entitled to underinsured motorist (UIM) benefits; insured could collect UIM benefits under his automobile policy for injuries suffered while riding his motorcycle, notwithstanding the family-owned exclusion clause. Honeycutt v. Walker, 119 N.C. App. 220, 458 S.E.2d 23 (1995).

Policy, which under the underinsured clause excluded all other owned vehicles not listed in the policy, was in violation of subdivision (b)(4) of this section. Nationwide Mut. Ins. Co. v. Mabe, 342 N.C. 482, 467 S.E.2d 34 (1996).

An underinsured highway vehicle as defined in subdivision (b)(4) can include a motor vehicle owned by the named insured, and the provisions in policies issued by an insurer attempting to exclude such coverage are invalid and unenforceable. State Farm Mut. Auto. Ins. Co. v. Young, 122 N.C. App. 505, 470 S.E.2d 361 (1996).

Exhaustion clause of insurance policy, etc. —

Subdivision (b)(4) requires a uninsured motorist (UIM) plaintiff to exhaust all remedies by seeking payment of judgments or settlements from the tortfeasor and liability insurer before seeking payment form the UIM insurer. Spivey v. Lowery, 116 N.C. App. 124, 446 S.E.2d 835, cert. denied, 338 N.C. 312, 452 S.E.2d 312 (1994).

Stacking Not Required Prior to Amendment. — The 1983 version of subdivision (b)(4), which was prior to

1985 amendment, did not require that the underinsured motorist coverages in the same policy be aggregated or stacked. Proctor v. North Carolina Farm Bureau Mut. Ins. Co., 335 N.C. 533, 439 S.E.2d 112 (1994).

Stacking Permitted for Private Passenger Vehicles. — Insurance company's owned vehicle exclusion was unenforceable and the insureds were entitled to stack their underinsured motorist (UIM) coverage if the vehicles listed in the policy were private passenger motor vehicles. Nationwide Mut. Ins. Co. v. Mabe, 115 N.C. App. 193, 444 S.E.2d 664 (1994), aff'd, 342 N.C. 482, 467 S.E.2d 34 (1996).

Stacking Not Permitted. — No underinsured motorist benefits were provided through decedent's business auto policy because the covered vehicle was not a "private passenger motor vehicle" as required for interpolicy stacking under subsection (b)(4). North Carolina Farm Bureau Mut. Ins. Co. v. Stamper, 122 N.C. App. 254, 468 S.E.2d 584 (1996).

Stacking Allowed in Determining Whether Tortfeasor's Car Is an "Underinsured Highway Vehicle." —

Underinsured motorist (UIM) coverage for a nonowner Class I insured under one policy could be stacked with the UIM coverage under another policy in which the party was also a nonowner insured. Mitchell v. Nationwide Ins. Co., 110 N.C. App. 16, 429 S.E.2d 351 (1993), pet. disc. rev. granted, 334 N.C. 164, 432 S.E.2d 363 (1993), aff'd, 335 N.C. 433, 439 S.E.2d 110 (1994).

Family Unit Entitled to Intrapolicy Stacking. —

Automobile accident victim was entitled to stack with his own policy providing underinsured motorist benefits the policies of his father and brother, both interpolicy and intrapolicy. Any amount he received under those policies would be reduced by the amount he received from the tortfeasor's exhausted liability policy. Harrington v. Stevens, 334 N.C. 586, 434 S.E.2d 212 (1993).

General Release Not Altered by Consent. — Uninsured motorist (UIM) carrier's consent to settlement did not alter the legal effect of a general release signed by plaintiff. Spivey v. Lowery, 116 N.C. App. 124, 446 S.E.2d 835, cert. denied, 338 N.C. 312, 452 S.E.2d 312 (1994).

Primary Insurer Not Entitled to Credit for Settlement with Secondary Insurer. — Since secondary insurer was not required to pay any of its UIM coverage until the policy limit of primary insurer's underinsured motorist coverage (UIM) had been exceeded, the primary insurer was not entitled to a credit for $25,000 settlement between plaintiff and the secondary insurance carrier. Isenhour v. Universal Underwriters Ins. Co., 345 N.C. 151, 478 S.E.2d 197 (1996).

Underinsured insurance carrier cannot assert a claim of contribution because the carrier is not a tortfeasor; however, the carrier can bring a direct action against one of the defendants even though that defendant executed a release in favor of the other defendants. Johnson v. Hudson, 122 N.C. App. 188, 468 S.E.2d 64 (1996).

Provisions of Statute Control Over Expressed Intentions of Parties. — Whatever the expressed intentions of the insurer and the insured, the rejection form executed by insured, because it failed to comply with the provisions of subsection (b)(4), did not constitute a proper and effective rejection of UIM coverage equal to the policy's liability limits. Hendrickson v. Lee, 119 N.C. App. 444, 459 S.E.2d 275 (1995).

Underinsured Benefits Reduced by Worker's Compensation Benefits. — An underinsured motorist coverage carrier under a business automobile policy is entitled to reduce its coverage by the amount of workers' compensation benefits which the same insurer paid to an injured worker. Brantley v. Starling, 336 N.C. 567, 444 S.E.2d 170 (1994).

In order to have amounts payable under underinsured motorist coverage reduced by amounts paid under workers' compensation coverage, subsection (e) does not require that the same entity provide both coverages. Brantley v. Starling, 336 N.C. 567, 444 S.E.2d 170 (1994).

No Set Off from UIM Coverage to Extent Workers' Compensation Benefits Paid. —

Where truck, in which plaintiff was riding at the time of the accident, was a business vehicle covered by the terms of the business auto policy with respect to underinsured motorist coverage, the trial court erred in finding that defendant insurance company, the underinsured motorist coverage carrier, was entitled to reduce its coverage by the amount of workers' compensation benefits which the same company paid to plaintiff. Brantley v. Starling, 111 N.C. App. 669, 433 S.E.2d 1, aff'd, 336 N.C. 567, 444 S.E.2d 170 (1994).

Coverage in Person Oriented. — Plaintiff, as the named insured under defendant's policy, was a first class insured and entitled to benefits under the underinsured motorist (UIM) coverage contained in the policy covering his automobiles, even though he was injured while riding his motorcycle which was not covered by the policy; UIM insurance is essentially person oriented, unlike liability insurance which is vehicle oriented. Honeycutt v. Walker, 119 N.C. App. 220, 458 S.E.2d 23 (1995).

Umbrella Coverage. — A multiple-coverage fleet insurance policy which includes umbrella coverage must offer underinsured motorist coverage equal to the liability limits under its umbrella coverage section. Isenhour v. Universal Underwriters Ins. Co., 341 N.C. 597, 461 S.E.2d 317 (1995).

Where there was no evidence in the record that insured either rejected in writing uninsured motorist or underinsured motorist coverage for the umbrella section of policy or selected a different limit, the umbrella section of the policy provided underinsured motorist coverage in an amount equal to the policy limits for automobile bodily injury liability as specified in the owner's umbrella coverage section of the policy. Isenhour v. Universal Underwriters Ins. Co., 341 N.C. 597, 461 S.E.2d 317 (1995).

Use of Rate Bureau Form Does Not Conflict with § 58-36-1. — By requiring rejection of UIM coverage to be accomplished by use of a specific Rate Bureau form, subsection (b)(4) does not effectively confer additional jurisdictional authority to the Rate Bureau, but is merely concerned with avoiding confusion and ambiguity through the use of a single standard and approved form, and mandating use of a Rate Bureau form for rejection of UIM coverage within a fleet policy does not necessarily conflict with § 58-36-1. Hendrickson v. Lee, 119 N.C. App. 444, 459 S.E.2d 275 (1995).

Form for the rejection of underinsured motorist coverage was ambiguous and was construed in favor of coverage, where it differed from the Rate Bureau directive for the rejection of underinsured motorist coverage in that the sole option available to an insured by the rejection form was to reject uninsured motorist coverage limits, and the rejection form limited an insured who rejected liability limits UM coverage to selection of UM coverage only at a state's statutory limits. Hendrickson v. Lee, 119 N.C. App. 444, 459 S.E.2d 275 (1995).

Absent completion of an approved selection or rejection form, the insured was, as a matter of law, entitled to $1,000,000 in underinsured motorist coverage. Metropolitan Property & Cas. Ins. Co. v. Caviness, 124 N.C. App. 760, 478 S.E.2d 665 (1996).

Coverage Not Required. — Automobile insurance policy which provided only the minimum statutorily required coverage of $25,000 per person/$50,000 per accident, was not required to provide UIM coverage. Hollar v. Hawkins, 119 N.C. App. 795, 460 S.E.2d 337 (1995).

Settlement Agreement Did Not Bar Recovery. — Injured claimant's entry into a settlement agreement with negligent driver and his carrier did not bar claimant, as a matter of law, from recovering under both son and daughter's UIM coverage as a first class insured. North Carolina Farm Bureau Mut. Ins. Co. v. Bost, — N.C. App. —, 483 S.E.2d 452 (1997).

§ 20-279.31. Other violations; penalties.

(a) The Commissioner shall suspend the license of a person who fails to report a reportable accident, as required by G.S. 20-166.1, until the Division receives a report and for an additional period set by the Commissioner. The additional period may not exceed 30 days.

(b) Any person who does any of the following commits a Class 1 misdemeanor:

(1) Gives information required in a report of a reportable accident, knowing or having reason to believe the information is false.

(2) Forges or without authority signs any evidence of proof of financial responsibility.

(3) Files or offers for filing any evidence of proof of financial responsibility, knowing or having reason to believe that it is forged or signed without authority.

(c) Any person willfully failing to return a license as required in G.S. 20-279.30 is guilty of a Class 3 misdemeanor.

(c1) Any person who makes a false affidavit or knowingly swears or affirms falsely to any matter under G.S. 20-279.5, 20-279.6, or 20-279.7 is guilty of a Class I felony.

(d) Any person who shall violate any provision of this Article for which no penalty is otherwise provided is guilty of a Class 2 misdemeanor. (1953, c. 1300, s. 31; 1983, c. 610, s. 2; 1993, c. 539, ss. 384, 1261; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 191, s. 7.)

Editor's Note. — Session Laws 1993, c. 539, ss. 384 and 1261, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-279.32. Exceptions.

This Article does not apply to a motor vehicle registered under G.S. 20-382 or G.S. 20-382.1 by a for-hire motor carrier. This Article does not apply to any motor vehicle owned by the State of North Carolina, nor does it apply to the operator of a vehicle owned by the State of North Carolina who becomes involved in an accident while operating the state-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the State. This Article does not apply to any motor vehicle owned by a county or municipality of the State of North Carolina, nor does it apply to the operator of a vehicle owned by a county or municipality of the State of North Carolina who becomes involved in an accident while operating such vehicle in the course of the operator's employment as an employee or officer of the county or municipality. This Article does not apply to the operator of a vehicle owned by a political subdivision, other than a county or municipality, of the State of North Carolina who becomes involved in an accident while operating such vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the subdivision providing that the Commissioner finds that the political subdivision has waived any immunity it has with respect to such accidents and has in force an insurance policy or other method of satisfying claims which may arise out of the accident. This Article does not apply to any motor vehicle owned by the federal government, nor does it apply to the operator of a motor vehicle owned by the federal government who becomes involved in an accident while operating the government-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the federal government. (1953, c. 1300, s. 32; 1955, c. 1152, s. 19; 1979, c. 667, s. 38; 1989, c. 485, s. 54; 1995 (Reg. Sess., 1996), c. 756, s. 18.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted "Article does not apply to a motor vehicle registered under G.S. 20-382 or G.S. 20-382.1 by a for-hire motor carrier" for "Article, except its provisions as to the filing of proof of financial responsibility by a common carrier and its drivers, does not apply to any vehicle operated under a permit or certificate of convenience or necessity issued by the North Carolina Utilities Commission, or by the Interstate Commerce Commission, if public liability and property damage insurance for the protection of the public is required to be carried upon it" in the first sentence.

CASE NOTES

Cited in Hand v. Connecticut Indemnity Co., 124 N.C. App. 774, 478 S.E.2d 661 (1996).

§ 20-279.33. Self-insurers.

CASE NOTES

Cited in Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

§ 20-279.34: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 27, effective July 16, 1994.

ARTICLE 11.

Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.

§ 20-284. Violation a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 385, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

§ 20-286. Definitions.

The following definitions apply in this Article:

(1), (2) Repealed by Session Laws 1973, c. 1330, s. 39.

(2a) Dealership facilities. — The real estate, buildings, fixtures and improvements devoted to the conduct of business under a franchise.

(2b) Designated family member. — The spouse, child, grandchild, parent, brother, or sister of a dealer, who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who under the laws of intestate succession of this State is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.

(3) Distributor. — A person, resident or nonresident of this State, who sells or distributes new motor vehicles to new motor vehicle dealers in this State, maintains a distributor representative in this State, controls any person, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to any motor vehicle dealer in this State.

(4) Distributor branch. — A branch office maintained by a distributor for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising the distributor's representatives in this State.

(5) Distributor representative. — A person employed by a distributor or a distributor branch for the purpose of selling or promoting the sale of new motor vehicles or otherwise conducting the business of the distributor or distributor branch.

(5a) Established office. — An office that meets the following requirements:

a. Contains at least 96 square feet of floor space in a permanent enclosed building.
b. Is a place where the books, records, and files required by the Division under this Article are kept.

(6) Established salesroom. — A salesroom that meets the following requirements:

a. Contains at least 96 square feet of floor space in a permanent enclosed building.
b. Displays, or is located immediately adjacent to, a sign having block letters not less than three inches in height on contrasting background, clearly and distinctly designating the trade name of the business.
c. Is a place at which a permanent business of bartering, trading, and selling motor vehicles will be carried on in good faith on an ongoing basis whereby the dealer can be contacted by the public at reasonable times.
d. Is a place where the books, records, and files required by the Division under this Article are kept.

The term includes the area contiguous to or located within 500 feet of the premises on which the salesroom is located. The term does not include a tent, a temporary stand, or other temporary quarters. The minimum area requirement does not apply to any place of business lawfully in existence and duly licensed on or before January 1, 1978.

(7) Factory branch. — A branch office, maintained for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising the factory branch's representatives in this State.

(8) Factory representative. — A person employed by a manufacturer or a factory branch for the purpose of selling or

promoting the sale of the manufacturer's motor vehicles or otherwise conducting the business of the manufacturer or factory branch.

(8a) Franchise. — A written agreement or contract between any new motor vehicle manufacturer, and any new motor vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchised product or leases or rents the dealership premises.

(8b) Franchised motor vehicle dealer. — A dealer who holds a currently valid franchise as defined in G.S. 20-286(8a) with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers.

(8c) Good faith. — Honest in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in G.S. 25-2-103(1)(b).

(8d) Independent motor vehicle dealer. — A dealer in used motor vehicles.

(8e) Manufacturer. — A person, resident or nonresident, who manufactures or assembles new motor vehicles, or who imports new motor vehicles for distribution through a distributor, including any person who acts for and is under the control of the manufacturer or assembler in connection with the distribution of the motor vehicles. Additionally, the term "manufacturer" shall include the terms "distributor" and "factory branch."

(9) Repealed by Session Laws 1973, c. 1330, s. 39.

(10) Motor vehicle. — Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above.

(11) Motor vehicle dealer or dealer. — a. A person who does any of the following:

1. For commission, money, or other thing of value, buys, sells, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

2. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

3. Engages, wholly or in part, in the business of selling new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.

4. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.

5. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail.

b. The term "motor vehicle dealer" or "dealer" does not include any of the following:

1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.
2. Public officers while performing their official duties.
3. Persons disposing of motor vehicles acquired for their own use or the use of a family member, and actually so used, when the vehicles have been acquired and used in good faith and not for the purpose of avoiding the provisions of this Article.
4. Persons who sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance, and auctioneers who sell motor vehicles for the owners or the heirs of the owners of those vehicles as part of an auction of other personal or real property or for the purpose of settling an estate or closing a business or who sell motor vehicles on behalf of a governmental entity, and who do not maintain a used car lot or building with one or more employed motor vehicle sales representatives.
5. Persons manufacturing, distributing or selling trailers and semitrailers weighing not more than 750 pounds and carrying not more than a 1,500 pound load.
6. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located.
7. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.
8. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motor vehicles owned by others.
9. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.
10. Any real property owner who leases any interest in property for use by a dealer.
11. Any person acquiring any interest in a motor vehicle for a family member.

(12) Motor vehicle sales representative or salesman. — A person who is employed as a sales representative by, or has an agreement with, a motor vehicle dealer or a wholesaler to sell or exchange motor vehicles.

(13) New motor vehicle dealer. — A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, new or new and used motor vehicles.

(13a) Person. — Defined in G.S. 20-4.01.

(13b) Relevant market area or trade area. — The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer the relevant market area shall be as follows:

a. If the population in an area within a radius of 10 miles around the proposed site is 250,000 or more, the relevant market area shall be that area within the 10 mile radius; or

b. If the population in an area within a radius of 10 miles around the proposed site is less than 250,000, but the population in an area within a radius of 15 miles around the proposed site is 150,000 or more, the relevant market area shall be that area within the 15 mile radius; or

c. Except as defined in subparts a. and b., the relevant market area shall be the area within a radius of 20 miles around an existing dealer.

In determining population for this definition the most recent census by the U.S. Bureau of the Census or the most recent population update either from Claritas Inc. or other similar recognized source shall be accumulated for all census tracts either wholly or partially within the relevant market area. In accumulating population for this definition, block group and block level data shall be used to apportion the population of census tracts which are only partially within the relevant market area so that population outside of the applicable radius is not included in the count.

(14) Repealed by Session Laws 1973, c. 1330, s. 39.

(15) Retail installment sale. — A sale of one or more motor vehicles to a buyer for the buyer's use and not for resale, in which the price thereof is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under a form of contract designated as a conditional sale, bailment lease, chattel mortgage or otherwise.

(16) Used motor vehicle dealer. — A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, used motor vehicles only.

(17) Wholesaler. — A person who sells or distributes used motor vehicles to motor vehicle dealers in this State, has a sales representative in this State, or controls any person who in whole or in part offers for sale, sells, or distributes any used motor vehicle to a motor vehicle dealer in this State. The provisions of G.S. 20-302, 20-305.1, and 20-305.2 that apply to distributors also apply to wholesalers. (1955, c. 1243, s. 2; 1967, c. 1126, s. 1; c. 1173; 1973, c. 1330, s. 39; 1977, c. 560, s. 1; 1983, c. 312; c. 704, ss. 2, 3, 21; 1987, c. 381; 1991, c. 527, s. 1; c. 662, s. 1; 1991 (Reg. Sess., 1992), c. 819, s. 23; 1993, c. 331, s. 1; 1995, c. 234, s. 1; 1997-456. s. 27.)

Editor's Note. — The subdivisions of subsection (11) were renumbered pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 1995, c. 234, s. 1, which amended this section, was effective June 13, 1995, and not to affect pending litigation.

CASE NOTES

Relevant Market Area or Trade Area. — The intent of the legislature was to exclude population outside the designated radius, and the Commissioner of the Division of Motor Vehicles erred by including population lying outside the designated radius when determining "relevant market area," though that population was within a census tract partially within that area. Al Smith Buick Co. v. Mazda Motor of Am., Inc., 122 N.C. App. 429, 470 S.E.2d 552 (1996), cert. denied, — N.C. —, 473 S.E.2d 609 (1996).

§ 20-288. Application for license; license requirements; expiration of license; bond.

(a) A person may obtain a license by filing an application with the Division. An application must be on a form provided by the Division and contain the information required by the Division. An application for a license must be accompanied by the required fee and by an application for a dealer license plate.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matters commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license.

(c) All licenses that are granted shall expire unless sooner revoked or suspended, on June 30 of the year following date of issue.

(d) To obtain a license as a wholesaler, an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State, and an applicant who intends to deal in only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is twenty-five thousand dollars ($25,000) for one established salesroom of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is twenty-five thousand dollars ($25,000) for one place of business of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional places of business.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle who shall have suffered any loss or damage by any act of a license holder subject to this subsection that constitutes a violation of this Article or Article 15 shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. A corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. Such cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12. (1955, c. 1243, s. 4; 1975, c. 716, s. 5; 1977, c. 560, s. 2; 1979, c. 254; 1981, c. 952, s. 3; 1985, c. 262; 1991, c. 495, s. 1; c. 662, s. 3; 1993, c. 440, s. 3; 1997-429, s. 1.)

Effect of Amendments. — The 1997 amendment, effective August 22, 1997, in subsection (d), in the first paragraph substituted "an applicant who intends to sell or distribute self-propelled vehicles" for "the applicant", inserted the language beginning "and an applicant who intends" and ending "Article are kept", and in the second paragraph inserted "who intends to deal in self-propelled vehicles" and inserted the language beginning "and an applicant who intends" and ending "this Article are kept."

§ 20-297. Retention and inspection of certain records.

(a) Vehicles. — A dealer must keep a record of all vehicles received by the dealer and all vehicles sold by the dealer. The records must contain the information that the Division requires.

(b) Inspection. — The Division may inspect the pertinent books, records, letters, and contracts of a licensee relating to any written complaint made to the Division against the licensee. (1955, c. 1243, s. 13; 1975, c. 716, s. 5; 1995, c. 163, s. 5.)

§ 20-297.1. Prefiling of franchise agreements and amendments.

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies all substantive revisions, modifications, and additions proposed.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article. (1997-319, s. 1.)

Editor's Note. — Session Laws 1997-319, s. 5, made this section effective October 1, 1997.

§ 20-301. Powers of Commissioner.

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other remedy, bring an action in the name of the State against that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin any persons from continuing the violations.

(e) The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section. (1955, c. 1243, s. 17; 1983, c. 704, s. 23; 1991, c. 510, s. 1; 1997-319, s. 2.)

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, rewrote this section.

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of

the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor

vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;

3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner shall try to conduct the hearing and render his final determination if possible, within 180 days after a protest is filed.

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. **(See editor's note for applicability)** For purposes of this subdivision, the addition, creation, or operation of a "satellite" or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall try to conduct the hearing and render a final determination within 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of

competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;

2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. —

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. —

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. —

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or

2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.

3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied

minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.
6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any

new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a

release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or

other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that at the time of the ratification of this act a manufacturer is currently operating a program or has in effect a policy which would violate this subdivision after the effective date of this act, it shall be lawful for that program or policy to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 1999. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program as of December 31, 1999, in accordance with the manufacturer's program or policy.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys“ fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers“ existing facilities in order to receive any particular model or series of vehicles manufactured or

distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles. (1955, c. 1243, s. 21; 1973, c. 88, ss. 1, 2; 1983, c. 704, ss. 5-10; 1987, c. 827, s. 1; 1991, c. 510, ss. 2-4; 1993, c. 123, s. 1; c. 331, s. 2; 1995, c. 163, s. 13; c. 480, s. 3; 1997-319, s. 3.)

Editor's Note. —

Session Laws 1995, c. 480, which amended subdivision (7) of this section, in s. 4 provides that an owner who appointed a successor prior to the effective date of those amendments, October 1, 1995, may obtain the benefits of those amendments by notifying the manufacturer or distributor, and by otherwise complying with the provisions of subdivision (7); and in s. 5, provides that neither the amendments to subdivision (7) nor the provisions of s. 4 shall be deemed to invalidate an appointment made prior to that date.

Session Laws 1995, c. 480, s. 6, provides that the amendments by that act to subdivision (7) of this section, and the provisions of ss. 4 and 5 noted above, are effective October 1, 1995, and are applicable on and after that date to the appointment by any owner of a new motor vehicle dealership of any successor to succeed in the owner's ownership interest in the dealership.

Session Laws 1997-319, s. 5, provides that the amendment adding subdivision (5)g. of this section shall not apply to satellite facilities licensed before July 1, 1997.

Effect of Amendments. — Session Laws 1995, c. 480, s. 3, rewrote subdivision (7). For effective date and applicability, see Editor's note.

The 1997 amendment, effective October 1, 1997, rewrote subdivision (5)c. and added subdivision (5)g.; in subdivision (6) substituted "shall try to" for "must" precding "conduct the hearing", substituted "within 180 days" for "no later than 180 days", deleted "provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause show, or upon the consent of all parties to the proceeding" following "has been filed", inserted "try to" preceding "render his final determination"; in subdivision (7)a. deleted "family member" preceding "successor"; substituted "successor" for "family member" in subdivision (7)b.1.; and added subdivisions (29) through (32).

CASE NOTES

Amendment Not Impairment of Right to Contract. — The amendment to this section, which provided a procedure by which an automobile dealer could seek administrative review of its franchisor's refusal to approve a relocation, was a patently reasonable exercise of the State's police power and was not an unconstitutional impairment of the parties' right to contract. Nissan Div. of Nissan Motor Corp. in United States v. Nissan, 111 N.C. App. 748, 434 S.E.2d 224 (1993).

Notification by Registered or Certified Mail. — The General Assembly intended for the phrase registered or certified mail, return receipt requested to refer exclusively to the delivery service offered by the U.S. Mail and not to notice delivered by any private delivery service. Nissan Div. of Nissan Motor Corp. in United States v. Fred Anderson Nissan, 337 N.C. 424, 445 S.E.2d 600 (1994).

Delivery by Federal Express, with return receipt, was held to be registered mail within the meaning of this section. Nissan Div. of Nissan Motor Corp. in United States v. Nissan, 111 N.C. App. 748, 434 S.E.2d 224 (1993).

Since the language of this section requires that notice be sent through registered or certified mail, return receipt requested and provides that failure to do so shall constitute waiver, car manufacturer waived any objection to dealer's proposed relocation by sending its notice by Federal Express. Nissan Div. of

Nissan Motor Corp. in United States v. Fred Anderson Nissan, 337 N.C. 424, 445 S.E.2d 600 (1994).

Relevant Market Area Where Same Line Make Represented. — The intent of the legislature was to exclude population outside the designated radius, and the Commissioner of the Division of Motor Vehicles erred by including population lying outside the designated radius when determining "relevant market area," though that population was within a census tract partially within that area. Al Smith Buick Co. v. Mazda Motor of Am., Inc., 122 N.C. App. 429, 470 S.E.2d 552 (1996), cert. denied, — N.C. —, 473 S.E.2d 609 (1996).

Commissioner's Ruling Became Law of the Case. — Commissioner of the Division of Motor Vehicles erred when he found dealer was precluded from pursuing further legal challenges to the establishment of an additional dealership based upon prior consent order, because the commissioner had ruled the consent order ceased to be effective after the lapse of a reasonable time and the manufacturer failed to appeal that ruling, which became the law of the case. Al Smith Buick Co. v. Mazda Motor of Am., Inc., 122 N.C. App. 429, 470 S.E.2d 552 (1996), cert. denied, — N.C. —, 473 S.E.2d 609 (1996).

§ 20-305.1. Automobile dealer warranty obligations.

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 24-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

(1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and

(2) Actually performed the work.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections (a), (b), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. —

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and

b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.

(5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) Damage/Repair Disclosure. — Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle

suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of "motorcycles" as defined in G.S. 20-4.01(27). (1973, c. 88, s. 3; c. 1331, s. 3; 1983, c. 704, ss. 11-13; 1987, c. 827, s. 1; 1989, c. 614, ss. 1, 2; 1991, c. 561, ss. 1-4; 1993, c. 116, ss. 1, 2; 1995, c. 156, s. 1; 1997-319, s. 4.)

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, in subsection (b1) deleted "in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose" from the end of the next to last sentence, and added the last sentence; and in subsection (c) substituted "subsections (a), (b), or (d) of this section" for "subsections (a) and (b) above and subsection (d) below", and added the last sentence.

§ 20-305.4. Motor Vehicle Dealers' Advisory Board.

(a) The Motor Vehicle Dealers' Advisory Board shall consist of six members; three of which shall be appointed by the Speaker of the House of Representatives, and three of which shall be appointed by the President Pro Tempore of the Senate to consult with and advise the Commissioner with respect to matters brought before the Commissioner under the provisions of G.S. 20-304 through 20-305.4.

(b) Each member of the Motor Vehicle Dealers' Advisory Board shall be a resident of North Carolina. Three members of the Board shall be franchised dealers in new automobiles or trucks, duly licensed and engaged in business as such in North Carolina, provided that no two of such dealers may be franchised to sell automobiles or trucks manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Three members of the Board shall not be motor vehicle dealers or employees of a motor vehicle dealer.

(c) The Speaker shall appoint two of the dealer members and one of the public members and shall fill any vacancy in said positions and the President Pro Tempore of the Senate shall appoint one of the dealer members and two of the public members and shall fill any vacancy in said positions. In making the initial appointments the Speaker shall designate that the two dealer members shall serve for one and three years respectively and the public member shall serve for two years, and in making the initial appointments the Lieutenant Governor shall designate that the dealer member shall serve for two years and the two public members shall serve for one and three years respectively.

(d) Two members of the first Board appointed shall serve for a period of three years, two members of the first Board shall serve for a period of two years, and two members of the first Board shall serve for a period of one year. Subsequent appointments shall be for terms of three years, except appointments to fill vacancies which shall be for the unexpired terms. Members of the Board shall meet at the call of the Commissioner and shall receive as compensation for their services seven dollars ($7.00) for each day actually engaged in the exercise of the duties of the Board and such travel expenses and subsistence allowances as are generally allowed other State commissions and boards. (1973, c. 88, s. 3; 1995, c. 490, s. 36.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

§ 20-308. Penalties.

Editor's Note. — Session Laws 1993, c. 539, s. 386, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-308.1. Civil actions for violations.

CASE NOTES

Cited in Huberth v. Holly, 120 N.C. App. 348, 462 S.E.2d 239 (1995).

ARTICLE 13.

The Vehicle Financial Responsibility Act of 1957.

§ 20-309. Financial responsibility prerequisite to registration; must be maintained throughout registration period.

CASE NOTES

Financial Responsibility Must Be Maintained on All Motor Vehicles. — Under this section financial responsibility as provided in Article 9A of Chapter 20 of the General Statutes—i.e., the Financial Responsibility Act—must be maintained upon all motor vehicles registered in this State. Hendrickson v. Lee, 119 N.C. App. 444, 459 S.E.2d 275 (1995).

§ 20-309.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 28, effective July 16, 1994.

§ 20-310: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 29, effective February 1, 1995.

§ 20-310.2: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 31, effective February 1, 1995.

Cross References. — This section is repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 31, effective February 1, 1995. For provisions concerning termination of a nonfleet private passenger motor vehicle insurance policy effective February 1, 1995, see G.S. 58-36-85.

§ 20-312. Failure of owner to deliver certificate of registration and plates after revocation; notice of revocation.

Editor's Note. — Session Laws 1993, c. 539, s. 387, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-313. Operation of motor vehicle without financial responsibility a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 388, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-313.1. Making false certification or giving false information a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 389, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-317. Insurance required by any other law; certain operators not affected.

This Article shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this Article, may be certified as proof of financial responsibility under this Article. This Article applies to vehicles of motor carriers required to register with the Division under G.S. 20-382 or G.S. 20-382.1 only to the extent that the amount of financial responsibility required by this Article exceeds the amount required by the United States Department of Transportation. (1957, c. 1393, s. 9; 1959, c. 1252, s. 1; 1975, c. 716, s. 5; 1995 (Reg. Sess., 1996), c. 756, s. 19.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote this section.

ARTICLE 14.

Driver Training School Licensing Law.

§ 20-322. Licenses for schools necessary; regulations as to requirements.

(a) No commercial driver training school shall be established nor any such existing school be continued on or after July 1, 1965, unless such school applies for and obtains from the Commissioner a license in the manner and form prescribed by the Commissioner.

(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. A driver education course offered to prepare an individual for a limited learner's permit or another provisional license must meet the requirements set in G.S. 20-88.1 for the program of driver education offered in the public schools. (1965, c. 873; 1997-16, s. 4.)

Editor's Note. — Session Laws 1997-16, s. 11, as amended by Session Laws 1997-443, s. 32.20, provides in part that this act becomes effective December 1, 1997.

Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 1997-16, s. 11 provides in part that sections 1 through 7 do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4 is a severability clause.

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, added the last sentence in subsection (b). See editor's note for applicability.

§ 20-324. Expiration and renewal of licenses; fees.

(a) Renewal. — A license issued under this Article expires two years after the date the license is issued. To renew a license, the license holder must file an application for renewal with the Division.

(b) Fees. — An application for an initial license or the renewal of a license must be accompanied by the application fee for the license. The application fee for a school license is eighty dollars ($80.00). The application fee for an instructor license is sixteen dollars ($16.00). The application fee for a license is not refundable. Fees collected under this section must be credited to the Highway Fund. (1965, c. 873; 1977, c. 802, s. 9; 1981, c. 690, s. 15; 1997-33, s. 1.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, rewrote the section.

§ 20-327. Penalties for violating Article or regulations.

Editor's Note. — Session Laws 1993, c. 539, s. 390, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 15.

Vehicle Mileage Act.

§ 20-348. Private civil action.

CASE NOTES

Defendants committed unfair and deceptive trade practices where car sold by defendants was severely structurally damaged, was not safe to operate, and plaintiff was misled by defendants into believing otherwise. Huff v. Autos Unlimited, Inc., 124 N.C. App. 410, 477 S.E.2d 86 (1996).

Applied in Payne v. Parks Chevrolet, Inc., 119 N.C. App. 383, 458 S.E.2d 716 (1995).

Cited in Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996).

§ 20-350. Criminal offense.

Editor's Note. — Session Laws 1993, c. 539, ss. 391 and 1262, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 15A.

New Motor Vehicles Warranties Act.

§ 20-351. Purpose.

CASE NOTES

The Lemon Law has several purposes; it protects consumers who purchase defective new vehicles, it encourages private settlement between consumers and manufacturers, and it seeks a fair result that neither unduly benefits nor unduly burdens either party to a dispute. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

§ 20-351.1. Definitions.

CASE NOTES

Cited in Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

§ 20-351.2. Require repairs; when mileage warranty begins to accrue.

CASE NOTES

A manufacturer's express warranties do not necessarily include that the vehicle will meet its owner's, or lessor's, expectations. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Cause of Nonconformity. — There is no statutory requirement that the buyer in all cases prove the cause of the nonconformity or identify any specific mechanical defect related to the nonconformity. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Although plaintiff did not show the precise mechanical defect within his braking system, he produced enough evidence to establish that shimmy and clicking were caused by a "defect" in the braking system; since, the warranty covered shimmying and clicking caused by a "defect," plaintiff's evidence was sufficient to support the trial court's finding that the shimmy and clicking constituted a nonconformity to, or breach of, the warranty. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

§ 20-351.3. Replacement or refund; disclosure requirement.

CASE NOTES

A manufacturer's express warranties do not necessarily include that the vehicle will meet its owner's, or lessor's, expectations. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Construction with Other Provisions. — The remedies provision, § 20-351.8, by referring directly to this section, fully incorporates the amount and type of relief available at the consumer's option into a jury's calculation of monetary damages. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

A consumer may not retain a vehicle for which he has received a refund under the Lemon Law whether the refund arises out of a request by the consumer pursuant to subsection (a) or out of a judgment for monetary damages. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

§ 20-351.8. Remedies.

CASE NOTES

Construction with Other Provisions. — This section, by referring directly to § 20-351.3, fully incorporates the amount and type of relief available at the consumer's option into a jury's calculation of monetary damages. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

Only the net loss to the consumer should be trebled. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Reduction of Damages by Reasonable Allowance for Use. — Trial court improperly calculated plaintiff's recovery by failing to reduce plaintiff's damages by the reasonable allowance for use before trebling damages; since the allowance for plaintiff's use of vehicle exceeded his damages, plaintiff recovered no damages on his claim under the act. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Attorney's Fees. — The term "court" as used in subdivision (3) of this section was interpreted to mean the trial judge. Therefore, for purposes of awarding attorney's fees, it is the trial judge, not the jury, that is to make the finding required by subdivision (3). After making such a finding, the court may, in its discretion, award attorney's fees. Buford v. GMC, 112 N.C. App. 437, 435 S.E.2d 782 (1993), reversed on other ground, 339 N.C. 396, 451 S.E.2d 293 (1994).

ARTICLE 16.

Professional Housemoving.

§ 20-371. Penalties.

Editor's Note. — Session Laws 1993, c. 539, s. 392, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 17.

Motor Carrier Safety Regulation Unit.

Part 1. General Provisions.

§ 20-376. Definitions.

The following definitions apply in this Article:

(1) Federal safety regulations. — The federal motor carrier safety regulations contained in 49 C.F.R. Parts 382 and 390 through 398.

(2) Foreign commerce. — Commerce between any of the following:
  a. A place in the United States and a place in a foreign country.
  b. Places in the United States through any foreign country.

(3) Interstate commerce. — Commerce between any of the following:
  a. A place in a state and a place in another state.
  b. Places in the same state through another state.

(4) Intrastate commerce. — Commerce that is between points and over a route wholly within this State and is not part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 5; 1995 (Reg. Sess., 1996), c. 756, s. 20; 1997-456, s. 36.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote this section.

The 1997 amendment, effective August 29, 1997, substituted "49 U.S.C. Subchapter B, Parts 350 through 399" for "49 C.F.R. Parts 382 and 390 through 398" in subdivision (1).

Part 2. Authority and Powers of Division.

§ 20-378: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 21, effective June 21, 1996.

§ 20-379. Division to audit motor carriers for compliance.

The Division must periodically audit each motor carrier to determine if the carrier is complying with this Article and, if the motor carrier is subject to regulation by the North Carolina Utilities Commission, with Chapter 62 of the General Statutes. In conducting the audit, the Division may examine a person under oath, compel the production of papers and the attendance of witnesses, and copy a paper for use in the audit. An employee of the Division may enter the premises of a motor carrier during reasonable hours to enforce this Article. When on the premises of a motor carrier, an employee of the Division may set up and use equipment needed to make the tests required by this Article. (1985, c. 454, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 22.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote this section.

§ 20-380. Division may investigate accidents involving motor carriers and promote general safety program.

The Division may conduct a program of accident prevention and public safety covering all motor carriers with special emphasis on highway safety and transport safety and may investigate the causes of any accident on a highway involving a motor carrier. Any information obtained in an investigation shall be reduced to writing and a report thereof filed in the office of the Division, which shall be subject to public inspection but such report shall not be admissible in evidence in any civil or criminal proceeding arising from such accident. The Division may adopt rules for the safety of the public as affected by motor carriers and the safety of motor carrier employees. The Division shall cooperate with and coordinate its activities for motor carriers with other agencies and organizations engaged in the promotion of highway safety and employee safety. (1985, c. 454, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 23.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in the catchline, substituted "Division may" for "To", and substituted "carriers and" for "carriers; to"; substituted "in an" for "upon such" following "information obtained" in the second sentence; deleted "and regulations" following "rules" in the third sentence; and substituted "agencies and" for "programs of the North Carolina Utilities Commission, the North Carolina Insurance Department, the North Carolina Industrial Commission and other" in the last sentence.

§ 20-381. Specific powers and duties of Division applicable to motor carriers.

The Division has the following powers and duties concerning motor carriers:

(1) To prescribe qualifications and maximum hours of service of drivers and their helpers.

(1a) To set safety standards for vehicles of motor carriers engaged in foreign, interstate, or intrastate commerce over the highways of this State and for the safe operation of these vehicles. The Division may stop, enter upon, and perform inspections of motor carriers' vehicles in operation to determine compliance with these standards and may conduct any investigations and tests it finds necessary to promote the safety of equipment and the safe operation on the highway of these vehicles.

(1b) To enforce this Article, rules adopted under this Article, and the federal safety regulations.

(2) To enter the premises of a motor carrier to inspect a motor vehicle or any equipment used by the motor carrier in transporting passengers [or property].

(2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle equipment the Division finds unsafe for use in the transportation of passengers or property on a highway. If an agent of the Division finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers or property to be unsafe or any parts thereof or any equipment thereon to be unsafe and is of the opinion that further use of such vehicle, parts or equipment are imminently dangerous, the agent may require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is in operative condition and its further movement is not dangerous to the passengers or property or to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers or property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of alcoholic beverages. It shall be the duty of all inspectors and agents of the Division to make a written report, upon a form prescribed by the Division, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes.

(3) To relieve the highways of all undue burdens and safeguard traffic thereon by adopting and enforcing rules and orders designed and calculated to minimize the dangers attending transportation on the highways of all hazardous materials and other commodities. (1985, c. 454, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 24; 1997-456, ss. 37, 38.)

Editor's Note. —

This section was amended by Session Laws 1995 (Reg. Sess., 1996), c. 756, s. 24, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote this section.

Session Laws 1997-456, ss. 37 and 38, effective August 29, 1997, substituted "stop, enter upon, and perform inspections of motor carriers' vehicles in operation to determine" for "stop and inspect a vehicle to determine if it is in" in subdivision (1a), and added "and other commodities" at the end of subdivision (3).

§ 20-382. Registration of for-hire interstate motor carriers and verification that their for-hire vehicles are insured.

(a) Registration. — A for-hire motor carrier may not operate a for-hire motor vehicle in interstate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) Registered its operations with the Division by doing one of the following:
  a. Filing a copy of the certificate of authority issued to it by the United States Department of Transportation allowing it to operate in this State and any amendments to that authority.
  b. Certifying to the Division that it carries only items that are not regulated by the United States Department of Transportation.

(2) Verified, in accordance with subsection (b) or (c) of this section, that it has insurance for each for-hire motor vehicle it operates.

(3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification for Federally Regulated Motor Carriers. — A for-hire motor carrier that operates a for-hire motor vehicle in interstate commerce in this State, is regulated by the United States Department of Transportation, and designates this State as its registration state must obtain a receipt from the Division verifying that each for-hire motor vehicle the motor carrier operates in any jurisdiction is insured. To obtain a receipt, the motor carrier must apply annually to the Division during the application period and state the number of for-hire motor vehicles the motor carrier intends to operate in each jurisdiction during the next calendar year. The certificate of authority issued to the motor carrier by the United States Department of Transportation is proof that the motor carrier has insurance for its for-hire motor vehicles.

The motor carrier must keep a copy of the receipt in each of its for-hire motor vehicles. The motor carrier may transfer the receipt from one for-hire motor vehicle to another as long as the total number of for-hire motor vehicles operated in any jurisdiction and in all jurisdictions does not exceed the number stated on the receipt.

A motor carrier may operate more for-hire motor vehicles in a jurisdiction than stated in its most recent annual application only if the motor carrier files another application with the Division and obtains a receipt stating the increased number. A motor carrier that obtains a receipt for an increased number of for-hire motor vehicles must put a copy of the new receipt in each of its for-hire motor vehicles. The new receipt replaces rather than supplements the previous receipt.

(c) Insurance Verification for Nonregulated Motor Carriers. — A for-hire motor carrier that operates a for-hire motor vehicle in interstate commerce in this State and is exempt from regulation by the United States Department of Transportation must verify to the Division that each for-hire motor vehicle the motor carrier operates in this State is insured. To do this, the motor carrier must obtain annually for each for-hire motor vehicle a cab card approved by the Commissioner and a North Carolina identification stamp issued by the Division. To obtain an identification stamp, the motor carrier must apply annually to the Division during the application period for an identification stamp for each for-hire motor vehicle the motor carrier intends to operate in this State during the next 12-month period beginning February 1.

The motor carrier must place the identification stamp on the cab card and keep the cab card in the for-hire motor vehicle for which it was issued. An identification stamp is issued for a specific for-hire motor vehicle and is not transferable from one for-hire motor vehicle to another.

A motor carrier may operate in this State a for-hire motor vehicle for which it did not obtain an identification stamp during the most recent annual application period only if it obtains for that vehicle either a cab card and identification stamp or an emergency permit. A motor carrier may obtain an additional identification stamp after the close of the annual application period by filing an application for it with the Division. An identification stamp issued after the close of the annual application period expires the same date as one issued during the annual application period.

A motor carrier may obtain an emergency permit by filing an application for it with the Division. An emergency permit allows the motor carrier to operate a for-hire motor vehicle in this State without a cab card and identification stamp between the time the motor carrier has applied for an identification stamp and the time the Division issues the identification stamp. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 25.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, inserted "for-hire" preceding "vehicles are insured" in the catchline; substituted "United States Department of Transportation" for "Interstate Commerce Commission" throughout the section; substituted "Federally Regulated" for "ICC-Regulated" in the subcatchline of subsection (b); and inserted "for-hire" preceding "motor carrier that operates" in the first sentence of the first paragraph of subsections (b) and (c).

§ 20-382.1. Registration of for-hire intrastate motor carriers and verification that their vehicles are insured.

(a) Registration. — A for-hire motor carrier may not operate a for-hire motor vehicle in intrastate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) For a motor carrier that hauls household goods, registered its operations with the State by doing one of the following:
  a. Obtaining a certificate of authority from the North Carolina Utilities Commission.
  b. Obtaining a certificate of exemption from the Division.

(1a) For a motor carrier that does not haul household goods, registered its operations with the Division.

(2) Verified, in accordance with subsection (b) of this section, that it has insurance for each for-hire motor vehicle it operates in this State.

(3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification. — A for-hire motor carrier that operates a for-hire vehicle in intrastate commerce in this State must verify to the Division that each for-hire motor vehicle it operates in this State is insured. To do this, the motor carrier must submit an insurance verification form to the Division and must file annually with the Division a list of the for-hire vehicles it operates in this State. (1993 (Reg. Sess., 1994), c. 621, s. 2; 1995 (Reg. Sess., 1996), c. 756, s. 26.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 6, made this section effective upon ratification. The Act was ratified July 1, 1994.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, inserted "for-hire" preceding "motor carrier may not" in subsection (a); added "For a motor carrier that hauls household goods" to the beginning of subdivision (a)(1); substituted "of authority from the North Carolina Utilities Commission" for "or a permit from the North Carolina Utilities Commission, if the motor carrier hauls regulated items" in subdivision (a)(1)a.; deleted "if the motor carrier hauls only items that are not regulated by the North Carolina Utilities Commission" from the end of subdivision (a)(1)b.; inserted subdivision (a)(1a); and inserted "for-hire" preceding "motor carrier that operates" in the first sentence of subsection (b).

§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.

(a) Acts. — A motor carrier who does any of the following is subject to a civil penalty of one thousand dollars ($1,000):

(1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.

(2) Operates a for-hire motor vehicle in interstate commerce in this State that does not carry a copy of either an insurance registration receipt issued to the motor carrier or a cab card with an identification stamp issued for the vehicle, as required by G.S. 20-382.

(3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment. — When the Division finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Division for a hearing.

(c) Hearing. — Upon receiving a request for a hearing, the Commissioner shall schedule a hearing within 30 days after receipt of the request. If after the hearing the Commissioner determines that the motor carrier was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Commissioner determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Division for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

(d) Proceeds. — A penalty imposed under this section is payable to the Division. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue. (1993 (Reg. Sess., 1994), c. 621, s. 3; 1997-466, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 6, made this section effective upon ratification. The Act was ratified July 1, 1994.

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, substituted "one thousand dollars ($1,000)" for "seventy-five dollars ($75.00)" in subsection (a); and substituted "shall" for "must" twice in subsection (c).

§ 20-384. Penalty for certain violations.

A motor carrier who fails to conduct a safety inspection of a vehicle as required by Part 396 of the federal safety regulations or who fails to mark a vehicle that has been inspected as required by that Part commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars ($50.00). (1985, c. 454, s. 1; 1985 (Reg. Sess., 1986), c. 1018, s. 13; 1993 (Reg. Sess., 1994), c. 754, s. 6; 1995 (Reg. Sess., 1996), c. 756, s. 27.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote this section.

Part 3. Fees and Charges.

§ 20-385. Fee schedule.

(a) Amounts. —

(1) Verification by a for-hire motor carrier of insurance for each for-hire motor vehicle operated in this State	$ 1.00

(2) Application by an intrastate motor carrier for a certificate of exemption	25.00
(3) Certification by an interstate motor carrier that it is not regulated by the United States Department of Transportation	25.00
(4) Application by an interstate motor carrier for an emergency permit	10.00.

(b) Reciprocal Agreements. — The fee set in subdivision (a)(1) of this section does not apply to the verification of insurance by an interstate motor carrier regulated by the United States Department of Transportation if the Division had a reciprocal agreement on November 15, 1991, with another state by which no fee is imposed. The Division had reciprocal agreements as of that date with the following states: California, Delaware, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Vermont. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 4; 1995 (Reg. Sess., 1996), c. 756, s. 28.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted "United States Department of Transportation" for "ICC" in subdivision (a)(3); and substituted "United States Department of Transportation" for "Interstate Commerce Commission" in subsection (b).

Part 4. Penalties and Actions.

§ 20-390. Refusal to permit Division to inspect records made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 393, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-395. Willful injury to property of motor carrier a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 394, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-396. Unlawful motor carrier operations.

Editor's Note. — Session Laws 1993, c. 539, s. 395, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-397. Furnishing false information to the Division; withholding information from the Division.

Editor's Note. — Session Laws 1993, c. 539, s. 396, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

December 1, 1997

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1997 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

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